

United States  
Court of Appeals  
for the Ninth Circuit

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WILLIAM D. NOLAND, Trustee, and WILLIAM  
D. NOLAND, Personal,

Appellant,

vs.

HARRY C. WESTOVER, Collector, United States  
Treasury Department, Internal Revenue Service,  
Sixth Collection District of California, Los  
Angeles Division, et al.,

Appellees.

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Transcript of Record


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Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

FILED

SEP 21 1948

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# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Affidavits in Support of Motion for Summary Judgment:	
John H. Cramer .....	75
Norman Hayward .....	76
George D. Martin.....	73
Raymond B. Sullivan .....	74
Harry C. Westover.....	62
Affidavit of William D. Noland in Support of Second Amended Complaint, April 9, 1948..	
Exhibit A—Benevolent Trust Estate, Contract and Agreement.....	36
Affidavit of William D. Noland in Support of Second Amended Complaint, April 19, 1948..	
Exhibit E—Notice of Deficiency .....	51
Appeal:	
Certificate of Clerk to Transcript of Record on .....	126
Cost Bond on.....	92
Designation of Record on (Appellant's—DC)	95
Designation of Record on (Appellee's Amended—DC) .....	125
Notice of .....	91
Order Extending Time to Docket.....	121
Statement of Points on (Appellant's—DC)..	122
Statement of Points on (Appellant's—USCA) .....	196

	PAGE
Certificate of Clerk to Transcript of Record on Appeal .....	126
Complaint, Second Amended.....	13
Affidavits of William D. Noland in Support of .....	35, 50
Complaint in Cause No. 5716-W.....	98
Cost Bond on Appeal.....	92
Designation of Record on Appeal:	
Appellant's—DC .....	95
Appellees' Amended—DC .....	125
Docket Entries 3/19/48 through 5/4/48.....	89
Judgment, Summary:	
In favor of Defendant Westover.....	81
In favor of Defendants Martin, et al.....	83
Minute Order, March 30, 1948—Hearing on Motions, Objections, etc.....	86
Motion for Summary Judgment of Defendant Westover .....	58
Affidavit in Support of.....	62
Motion for Summary Judgment of Defendants Martin, et al.....	63
Exhibit A—Affidavit of George D. Martin...	73
Exhibit B—Affidavit of Raymond B. Sullivan .....	74
Exhibit C.—Affidavit of John H. Cramer...	75
Exhibit D—Affidavit of Norman Hayward..	76

	PAGE
Motion to Amend Complaint.....	85
Motion to Dismiss.....	2
Exhibit A—Affidavit of Harry C. Westover in Support of .....	8
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	91
Notice of Motion for Summary Judgment.....	57
Objection to Motion to Dismiss.....	9
Exhibit A—Order and Judgment of Dismissal as to Defendants George D. Martin, Nor- man Hayward, Raymond B. Sullivan, and John H. Cramer.....	10
Objection to Motion for Summary Judgment: Defendants Martin, et al.....	78
Defendant Westover .....	80
Order and Judgment of Dismissal in Cause No. 5716-W:	
As to Defendant George D. Martin, et al....	117
As to Defendant Joseph D. Nunan, Jr.....	115
Order Extending Time to Docket Appeal.....	121
Affidavit in Support of.....	120
Statement of Points on Appeal:	
Appellants—DC .....	122
Appellants—USCA .....	196
Transcript of Proceedings, Reporter's:	
March 30, 1948.....	128
April 19, 1948.....	189



## NAMES AND ADDRESSES OF ATTORNEYS:

For Appellants:

WILLIAM D. NOLAND, in Pro Per.  
2030 Wilshire Blvd., Suite 201-205,  
Los Angeles 5, Calif.

For Appellees:

JAMES M. CARTER, United States Attorney,  
E. H. MITCHELL and  
GEORG EM. BRYANT, Assistants U. S.  
Attorney,

EUGENE HARPOLE, Special Attorney,  
Bureau of Internal Revenue,  
600 U. S. Post Office &  
Court House Bldg.,  
Los Angeles 12, Calif. [1\*]

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\* Page numbering appearing at foot of page of original  
certified Transcript of Record.

In the District Court of the United States,  
Southern District of California,  
Central Division.

No. 7315—O'C

WILLIAM D. NOLAND, H. K. MILLER, and  
HARRY R. MAXWELL, Trustees, Dr. Wil-  
liam D. Noland Trust Estate, Ltd., A Benevo-  
lent Trust Estate, and WILLIAM D. NOLAND  
Complainants.

vs.

HARRY C. WESTOVER, Collector, United States  
Treasury Department, Internal Revenue Serv-  
ice, Sixth Collection District of California, Los  
Angeles Division.

Defendant.

### MOTION TO DISMISS

Comes now the defendant, Harry C. Westover, Collector of Internal Revenue for the Sixth Collection District of California, by and through his attorneys herein mentioned and moves the Court to dismiss the above action with prejudice upon the following grounds, to-wit:

#### I.

Paragraph 4 in the prayer for relief on pages 13, 14 of the complaint herein prays "That the Internal Revenue Service be ordered to return with interest the amounts of \$35.64 and \$80.45 totaling \$116.10, to the trustees hereof for the aforesaid



benevolent trust estate, as claims for the return of said amounts were filed with the [2] Internal Revenue Service at Los Angeles, California, on or about March 15, 1946, and to date there has been no reply in reference to the said amounts of \$35.64 and \$80.45, which were paid as additional taxes in 1942 and claims filed on March 15, 1946, for the return of said amounts with the said Internal Revenue Service, and that Complainant Trustee be given judgment for said amounts with interest." Page 1 of Complainants' Exhibit I filed herein with the "Supplemental Memorandum of Points and Authorities in Support of Bill of Complaint" shows that by Complainants' own admission the above payment of \$80.45 was made on July 6, 1942. Page 3 of the above Exhibit I shows that by Complainants' own admission the above \$35.64 was paid on "dates of payment on or before March 15, 1943." It accordingly follows that none of the amounts as to which refunds are herein sought were paid later than the date of March 15, 1943, or prior thereto. None of such payments could in any event have been collected by the above defendant, Collector of Internal Revenue, since such Collector did not commence his duties as Collector of Internal Revenue for the Sixth Collection District of California until July 1, 1943. As to the date when such Collector assumed his duties see paragraph 21,018, page 21,027, Vol. 3 of the 1947 Prentice-Hall Federal Tax Service and affidavit of said Harry C. Westover, which is attached hereto, marked Exhibit A and hereby

incorporated herein by reference. None of the relief sought in Complainants' above prayer for relief is allowable against said Harry C. Westover and since he is the sole defendant herein, this proceeding should be dismissed.

## II.

The above prayer for relief appearing at pages 13 and 14 in the Complaint herein filed and especially paragraphs 1 and 2 of such prayer seeks an adjudication herein with respect to the rights of an alleged benevolent trust estate described as the Dr. William D. Noland Trust Estate, Ltd., of which William D. Noland, H. K. Miller and Harry R. Maxwell are alleged to be the trustees. All of the above trustees and the foregoing trust are indispensable parties plaintiff, but none [3] of the above trustees have appeared herein with the possible exception of William D. Noland, and if he has **appeared herein as trustee, such appearance would not be valid or authorized in view of his adverse interest with respect to the above trust as shown by the complaint herein, and other papers herein filed by Complainants.** Since the only plaintiff validly appearing herein is William D. Noland in his individual capacity, there is an absence of indispensable parties plaintiff as to all of the other plaintiffs or Complainants named in the Complaint herein, and in view of the absence of the above indispensable parties plaintiff, the Court lacks jurisdiction of the above entitled action, which relates to the foregoing trust and trustees.



### III.

The above prayer for relief appearing at pages 12 and 14 of the Complaint herein filed and especially the first three paragraphs thereof in effect seeks a declaratory judgment with respect to various liabilities for Federal taxes and the seeking of such relief violates Section 274d. of the Judicial Code (Section 400, Title 28, U.S.C.A.) as more particularly set forth in the Memorandum of Points and Authorities supporting this motion and hereto attached.

### IV.

The Complaint filed in the above entitled action fails to state a claim upon which relief as prayed for in Complaint or any other relief can be granted against the above defendant.

### V.

The above prayer for relief appearing on pages 13 and 14 of the Complaint herein filed seeks a refund with respect to the above mentioned alleged payments of \$80.45 and \$35.64 but as shown by pages 1, 2, 3 and 4 of Complainants' above Exhibit I, the refund claims in question were executed by William D. Noland on behalf of the aforementioned trust. The above defendant hereby repeats and incorporates herein by reference the statements in the above ground II hereof to the effect that this trust could not validly take action as to these matters re-

lating to the trust unless the aforementioned three trustees act "collectively" as [4] contemplated by the trust agreement and furthermore any action with respect to the tax liabilities of the above trust could not validly be taken by William D. Noland alone since he had an adverse interest against the above trust as set forth in ground II in support of this Motion and appearing at pages 2 and 3 hereof. The above refund claims filed March 15, 1946, were accordingly invalid and for lack of proper refund claims no refund with respect to the foregoing amounts may be made under Section 322(b) (1) and (2) of the Internal Revenue Code as more particularly set forth in the memorandum supporting this Motion. In any event the above payment of \$80.45 as shown by page 1 of Complainants' above Exhibit I related to the taxable year from January 1, 1937 to December 31, 1937, and such payment was made on July 6, 1942. This payment was accordingly made more than three years prior to March 15, 1946 (the date of the filing of the refund claim for such amount of \$80.45 as shown by page 1 of Complainants' above Exhibit I). Since the above page 1 of Exhibit I shows that this \$80.45 payment for the year 1937 was made more than three years prior to the above filing of the refund claim on March 15, 1946, any refund with respect to such amount of \$80.45 or any part thereof has been barred by the above Section 322(b) (1) and (2), and therefore this action and the bill of complaint must in any event be stricken and dismissed at least

with respect to those parts thereof dealing with the above payment of \$80.45. Defendant does not waive however the various grounds hereinbefore mentioned upon which he prays that this action and the above bill of complaint be dismissed in their entirety.

This Motion is based upon the files, pleadings, exhibits and memoranda in this case, upon the points and authorities filed by the above defendant concurrently herewith, upon such other points [5] and authorities as may hereinafter be filed by this defendant and upon oral argument.

Dated: September 5, 1947.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
GEORGE M. BRYANT,  
Assistant United States  
Attorneys.

EUGENE HARPOLE and  
LOREN P. OAKES,  
Special Attorneys  
Bureau of Internal Revenue.

By /s/ LOREN P. OAKES.

Attorneys for Defendant Harry C. Westover, Collector of Internal Revenue for Sixth Collection District of California.

[Title of District Court and Cause]

EXHIBIT "A"

AFFIDAVIT IN SUPPORT OF MOTION TO  
DISMISS

State of California,  
County of Los Angeles.—ss.

Harry C. Westover, being first duly sworn, deposes and says:

I am the Collector of Internal Revenue for the Sixth Collection District of California with offices in the Federal Building, Los Angeles, California. I commenced my duties as such Collector on July 1, 1943, and prior to that date I never held the office of nor acted as a Collector of Internal Revenue for the United States of America in the Sixth Collection District of California or elsewhere.

/s/ HARRY C. WESTOVER.

Subscribed and sworn to before me this 5th day of September, 1947.

(Seal)        /s/ C. M. COMMINS,  
Notary Public in and for said County and State.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Sept. 6, 1947. [7]

[Title of District Court and Cause]

OBJECTION TO MOTION TO DISMISS

Comes now the complainants William D. Noland, Trustee, Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and William D. Noland, personal, and objects to motion to dismiss as made by defendant, as motion to dismiss is not correct as to law.

This objection is supported by memorandum of points and authorities filed herewith, and all papers filed herein in the files.

Dated: Los Angeles, Calif., Sept. 9, 1947.

Respectfully Submitted,

/s/ WILLIAM D. NOLAND

Trustee, Dr. William D. Noland Trust Estate, Ltd.,

A Benevolent Trust Estate. In Propia Persona.

Exhibit "A" attached hereto in support of this objection and made a part hereof.

/s/ WILLIAM D. NOLAND,

Personal, In Propia Persona.



## EXHIBIT "A"

In the District Court of the United States,  
Southern District of California,  
Central Division.

No. 5716-w—Civil

WILLIAM D. NOLAND, H. K. MILLER and  
HARRY R. MAXWELL, Trustees, Dr. Wil-  
liam D. Noland Trust Estate, Ltd., a benevolent  
trust estate, and WILLIAM D. NOLAND,  
Complainants.

vs.

GEORGE D. MARTIN, Internal Revenue Agent  
in Charge, United States Treasury Department,  
Internal Revenue Service, Sixth Collection Dis-  
trict of California, Los Angeles Division; NOR-  
MAN HAYWARD, Internal Revenue Agent;  
JOSEPH D. NUNAN, JR., Commissioner, in-  
ternal Revenue Service; RAYMOND B. SUL-  
LIVAN, Acting Internal Revenue Agent; and  
JOHN H. CRAMER, Internal Revenue Agent,  
Defendants.

ORDER AND JUDGMENT OF DISMISSAL AS  
TO DEFENDANTS GEORGE D. MARTIN,  
NORMAN HAYWARD, RAYMOND B.  
SULLIVAN, and JOHN H. CRAMER,  
INTERNAL REVENUE AGENTS

On November 19, 1946, the said defendants,  
George D. Martin, Norman Hayward, Raymond B.  
Sullivan and John H. Cramer, Internal Revenue

Agents (hereinafter referred to as the above four defendants) filed a Motion moving the Court to dismiss the above action as to them upon grounds set forth in such Motion including the ground that the Complaint herein fails to state facts sufficient to justify the issuance of an injunction or the granting of any injunctive relief whatsoever herein, and the further ground that such Complaint fails to state a claim upon which relief as prayed for in the Complaint or [10] any other relief can be granted against the above four defendants or any of them.

The matter of the foregoing Motion by the above four defendants having regularly come on for hearing on December 4, 1946, before the Honorable Jacob Weinberger, Judge presiding therein, and the Complainant William D. Noland appearing in propria persona on behalf of himself individually, and also as trustee of the above Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and the above four defendants appearing by James M. Carter, E. H. Mitchell and Loren P. Oakes, counsel for such defendants, and all matters relating to the above Motion having been submitted to the Court for its decision, and the Court having considered the pleadings and other papers herein filed and heard the arguments of the Complainant William D. Noland appearing in the capacities above stated and of counsel for the above four defendants concerning the foregoing matter, and the Court being fully advised in the premises, and by

virtue of the law, the matters aforesaid and the grounds hereinafter mentioned, now renders its decision as follows:

It Is Hereby Ordered, Adjudged And Decreed:

1. That the application and prayer in the Complaint and proceedings herein for and injunction or any type of injunctive relief whatsoever is hereby denied on the grounds (a) that the Complaint herein filed does not state a claim upon which relief can be granted by the issuance of any type of injunction or injunctive relief, (b) that it does not appear that any irreparable injury, loss or damage will result from the failure to issue any type of injunction or injunctive relief, and (c) as to the grounds set forth in the Complaint in connection with the Prayer for injunction or injunctive relief, the Complainants have plain, speedy and adequate remedies at law to such an extent that this Court cannot properly grant any type of injunction or injunctive relief as prayed for in the Complaint herein.

2. That the above action not only with respect to the injunctive [11] relief therein prayed, but also as to all of its other aspects and in its entirety, is hereby dismissed as to the above four defendants on the ground that the Complaint herein filed fails to state a claim upon which relief as prayed for in the Complaint or any relief can be granted against said four defendants or any of them.

3. That the said defendants, George D. Martin, Norman Hayward, Raymond B. Sullivan and John



H. Cramer, Internal Revenue Agents, shall have judgment for and shall recover from the said Complainant William D. Noland individually and as trustee of the said Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, in the amount of the costs of said defendants, to be taxed by the Clerk of this Court in the sum of \$. . . . .

4. That the Clerk of this Court shall enter this Order and Judgment of Dismissal.

Dated: This 9th day of January, 1947.

/s/ JACOB WEINBERGER,

United States District Judge.

[Endorsed]: Filed Sept. 10, 1947.

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[Title of District Court and Cause.]

## SECOND AMENDED BILL OF COMPLAINT

Comes now William D. Noland, Trustee, representing his interest as such trustee, in Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and other trustees of the board of trustees for said benevolent trust estate, are H. K. Miller and Harry R. Maxwell, and said benevolent trust estate is organized and established by contract, by and between the said trustees under the provisions of the Constitution of the United States of America, the said contract provides that the said trustees shall act under their citizenship rights, common law rights of contract, and under the provisions of the said Constitution of the United States of America, and the said trustees, shall carry out their [13]

trust as a benevolent trust estate as provided under the terms and conditions of the contract under which said benevolent trust is established as a charitable organization, and the said trustee William D. Noland is a party to the contract under which the said benevolent trust estate is established, therefore, the said William D. Noland, Trustee, is representing his interest in said contract, and William D. Noland personally is representing himself personally, and as a trustee and personal, complains in this second amended bill of complaint against the defendants and each of them, for a cause of action, as follows, to wit:

1.

The contract under which the aforesaid benevolent trust estate is established and organized was written by the late Franklin P. Bull, commonly known as Judge Bull, who prior to his passing in death, had practiced law in the State of California for over a period of fifty years, and the trustees for said benevolent trust estate, have offices at 2030 Wilshire Blvd., Suite 201-205, Los Angeles 5, California.

2.

The defendants Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service,

Sxith Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent, Los Angeles, California; Raymond B. Sullivan, Acting Internal Revenue Agent, Los Angeles, California; and John H. Cramer, Internal Revenue Agent, Los Angeles, California; have offices at 417 South Hill Street, Los Angeles, California, and fictitious named defendants, John Doe, Jane Doe and others individually and collectively, Does 1 to 10, the correct names and addresses of whom are unknown at this time to complainants, [14] and when correctly known complainants will respectfully beg leave of the Court to amend this second amended bill of complaint and substitute the correct names and addresses of said fictitious named defendants.

3.

For the jurisdiction of this cause and action in the above entitled court, federal statutes and federal questions are involved, and the damages, losses and injuries caused by fraud to complainants are in excess of Three Thousand (\$3,000.00) Dollars over and above all costs and attorney fees in the prosecution of this cause and action in the above entitled court.

4.

That on or about July 6, 1942, Norman Hayward, Internal Revenue Agent and collector for United States Treasury Department, Sixth Collection District of California, Los Angeles Division, had made several calls prior to said date and after said date

of July 6, 1942, at the office of complainants, at 3944 Wilshire Blvd., Los Angeles, California, and the said Norman Hayward upon his first call at the said office of complainants, on or about June 6, 1942, demanded that he have possession of the trustees books and records of the aforesaid Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, for the purpose to go over and examine said books and make a report from said books as to his findings to the Internal Revenue Service, Treasury Department of the United States, threatening that if he was not furnished the said books and records and allowed to examine same, that he would have warrants issued against William D. Noland, one of the trustees, of the board of trustees for the said Dr. William D. Noland Trust Estate, Ltd., and the said books and records of the aforesaid trustees and complainants were produced to the said Norman Hayward, defendant herein, and Internal Revenue Agent, and he proceeded to read and check in all detail the [15] said trustees books and records, spending several days at the office of aforesaid trustees and complainants hereof in examining and going over the said books and records.

5.

That during the aforesaid several days time consumed in examining and going over the aforesaid trustees books and records by the aforesaid Norman Hayward, defendant and Internal Revenue Agent and Collector, the said Norman Hayward in making

up a schedule of taxation as an additional tax, to correspond with his personal views of a schedule for additional taxation for the years of 1937, 1938, 1939, 1940 and 1941, he wilfully and maliciously, with malice aforethought, through and by fraud, fraudulently confiscated, assets, funds and property belonging to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., from the said trustees books and records, and fraudulently assigned, transferred and delivered said assets, funds and property belonging to and owned by the said benevolent trust estate in a schedule to the personal account of William D. Noland personally, and in this manner of fraud, the said Norman Hayward fraudulently made a personal additional income taxation against William D. Noland personally, in the sum of \$401.03, for the said years of 1937, 1938, 1939, 1940 and 1941, after the said trustees had made tax returns for the said benevolent trust estate, for the said years.

6.

The aforesaid Norman Hayward, defendant and Internal Revenue Agent and Collector, after going over and examining the said trustees books and records, and after making the aforesaid fraudulent confiscations, assignments, transfers and deliveries of the assets, funds and property belonging to the aforesaid benevolent trust estate to the personal account of William D. Noland personally, a com-



plainant hereof, the said Norman Hayward then further demanded [16] with a threat of issuing warrants, the payment of aforesaid fraudulent additional taxation he unconstitutionally had created against William D. Noland personally, and then the said Norman Hayward accepted the sum of \$80.45 in payment of the said additional taxation he had created against the personal account of William D. Noland complainant for the year of 1937, and the said additional taxation was thus fraudulently established against the personal account of said complainant for the said year of 1937 by the said Norman Hayward, Internal Revenue Agent, in conflict with \$63.85, which the said Norman Hayward formerly created through and by fraud as income tax for the year of 1937, by and through his fraudulent assignments, transfers and deliveries as made by the said Norman Hayward from the trustees books and records of the assets, funds and property belonging to the aforesaid Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, to the personal account of said William D. Noland complainant, for the purpose of fraudulently establishing and collecting an additional income tax from William D. Noland personally, in addition to the returns and reports for income tax as made and paid in error by the trustees of the board of trustees for said Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and the said Norman Hayward gave a receipt for the aforesaid \$80.45, a copy of which is filed herewith as an exhibit.

## 7.

Complainants further allege, that George D. Martin, Internal Revenue Agent in Charge, and John H. Cramer, Internal Revenue Agent, both of whom are defendants herein, under date of January 26, 1945, in a letter addressed to Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, William D. Noland, Trustee, with statements attached to said letter showing that assets, funds and property belonging to the said Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, were [17] fraudulently confiscated and assigned, transferred and delivered to the account of William D. Noland personally, with a provision in said attached statements that William D. Noland personally must pay an additional personal income tax of \$656.75 for the year of 1942, said statements was dated November 3, 1944, and complainants contend that the procedure herein of taking the assets, funds and property of the said benevolent trust estate and charging same to the account of complainant William D. Noland, is unconstitutional confiscation of property without due process of law.

## 8.

Complainants William D. Noland, Trustee, and William D. Noland personally, that upon receipt of the aforesaid letter dated January 26, 1945, from the aforesaid George D. Martin, Internal Revenue Agent in Charge, which was a notification to the aforesaid trustees of the board of trustees for the

aforesaid benevolent trust estate, that an additional income tax of \$1,114.86 totally was due which was created by an additional income tax of \$1,061.77, plus a penalty of \$53.09, attached to said letter of January 26, 1945 was a statement signed by John H. Cramer, Internal Revenue Agent, setting forth an additional income tax of \$656.75 for the year of 1942, and the said \$1,114.86 being an additional income tax for the year of 1943, as additional income taxes against William D. Noland personally, which had been created by the aforesaid Internal Revenue Agents, by the aforesaid fraudulent confiscations, transfers, assignments and deliveries of the assets, funds and property from the aforesaid benevolent trust estate without the consent of the trustees to the account of William D. Noland personally, and said unconstitutional confiscations of property belonging to said benevolent trust estate was further done without due process of law.

9.

Complainants further allege, that upon receipt of the aforesaid [18] notifications and letters advising that additional income taxes had been assessed in the manner aforesaid, complainants hereof, filed a protest with aforesaid Internal Revenue Agents and Service, and with aforesaid Internal Revenue Agent in Charge, protesting the aforesaid assignments, transfers and deliveries of the assets, funds and property from the ownership of aforesaid benevolent trust estate to the account of William D. Noland Personally for the purpose of



additional income taxation, and after numerous hearings before the said Internal Revenue Service and Department, on or about December 29, 1945, a letter addressed to William D. Noland was received from the said Internal Revenue Service, of 417 South Hill Street, Los Angeles 13, California, notifying the said William D. Noland complainant herein, of a deficiency of an additional income tax liability in the sum of \$1,245.13 and a penalty of \$62.26, which was shown in a statement attached to said letter, for the taxable year ended December 31, 1943, and said was signed by Joseph D. Nunan, Jr., Commissioner of Internal Revenue, and also signed by Raymond B. Sullivan, Acting Internal Revenue Agent in Charge.

10.

Complainants hereof, William D. Noland, Trustee, and William D. Noland, Personally, further allege that within ninety (90) days after hearing of protest before aforesaid Internal Revenue Service and Department, and receiving the aforesaid letter dated December 29, 1945, that complainants filed a petition for hearing on appeal for a redetermination of the aforesaid income tax matters in controversy to the Tax Court of the United States, at Washington, D. C., and that on or about August 2, 1946, the said Tax Court of the United States, ruled and held that respondent's motion to dismiss for lack of jurisdiction be granted, and the tax matters in relation to aforesaid income tax controversy was dismissed by the said Tax Court of the United States. [19]

## 11.

Complainants further allege, that the business involved herein, is conducted and operated under the aforesaid benevolent trust estate as a charitable organization and institution, for the benefit of poor people and poor children, who have no money with which to pay for service such as is given to said poor people and poor children by said charitable organization and as such the said benevolent trust estate has been in continual operation conducting this charitable and benevolent work since June 1, 1935, and is now operating as such charitable organization, caring for the beneficiaries of said benevolent trust estate, who are the said poor people and poor children.

## 12.

Complainants further allege, that the aforesaid benevolent trust estate and charitable organization, operates under a contract made and entered into by and between the trustees of the board of trustees for said benevolent trust estate, and also under another contract made and entered into by and between the trustees hereof and William D. Noland as a Doctor of Chiropractic, wherein said William D. Noland gives his services without any salary, wages, or profit, for the benefit of the aforesaid poor people and poor children, and both of the said contracts are made and entered into under the provisions of the Constitution of the United States of America, wherein the said benevolent trust estate is

administered by natural person trustees in joint tenancy, holding in trust as to distribution of avails, acting under citizenship, common law rights of contract, constitutional rights, federal laws and immunities vouchsafed to all persons, as set forth and provided in and by the Constitution of the United States of America, in a benevolent and charitable manner for the purpose of caring for poor people and children to give them health when they have no funds to pay for service urgently required. [20]

## 13.

Complainants further allege, that the aforesaid Internal Revenue Agents, set forth and claim as set forth in exhibit hereof, that Section 167 of the Federal Internal Revenue Code, as cited by said Internal Revenue Agents on page 3 of Exhibit F filed herewith in support of this second amended bill of complaint, the said Revenue Agents claiming where the Trustee, Trustor and Beneficiary are one and the same, the income is taxable to the Trustor, which is particularly alleged by the aforesaid defendant John H. Cramer, Internal Revenue Agent, on page 3, of Exhibit E filed herewith, also claiming the said section 167 supports the aforesaid Internal Revenue Agents of the Federal Internal Revenue Service, in their making the aforesaid fraudulent unconstitutional confiscations, assignments, transfers and deliveries of the assets, funds and property belonging to and owned by the aforesaid benevolent trust estate, namely, Dr. William

D. Noland Trust Estate, Ltd., to the account of William D. Noland personally, for the purpose of creating and establishing aforesaid additional income taxes, pursuant to returns and reports on income taxes having been made and paid in error by the trustees for said benevolent trust estate.

## 14.

Complainants further allege, and contend, that the aforesaid section 167, of the Federal Internal Revenue Code, is not applicable to and does not apply to the said benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., which is organized as charitable institution under the provisions of the Constitution of the United States by a contract by and between the trustees, and a contract by and between the trustees and William D. Noland, as a Doctor of Chiropractic, and there are also numerous beneficiaries, therefore, the trustee, trustor and beneficiary are not one and the same, as claimed by the aforesaid [21] John H. Cramer and aforesaid Internal Revenue Agents, and the said Section 167 of the Federal Internal Revenue Code as cited by said Internal Revenue Agents is not applicable to the matters involved herein and complainants further contend that the said section 167 is of no support to the claims and contentions of the said and aforesaid Internal Revenue Agents, in the matter of William D. Noland Trustee, for Dr. William D. Noland Trust Estate, Ltd., a benevolent trust, and William D. Noland personally, for

additional income taxation in the manner in which said Internal Revenue Agents have attempted to create and establish said additional taxation.

## 15.

Complainants further allege, that the income tax returns for the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., for the years of 1937, 1938, 1939, 1940, 1941, 1942, 1943 and all following years have been consecutively filed with the Internal Revenue Service of the United States for each of the said years for said benevolent trust estate, wherein the aforesaid Internal Revenue Agents have made aforesaid fraudulent unconstitutional confiscations, assignments, transfers and deliveries from the assets, funds and property belonging to the aforesaid benevolent trust estate, to the personal account of complainant William D. Noland personally for the purpose of creating additional income taxes without the consent and permission of the trustees for said benevolent trust estate, and further without the consent and permission of William D. Noland, Trustee, and William D. Noland personally.

## 16.

Complainants further allege, that the aforesaid fraudulent and unconstitutional confiscations, transfers, assignments and deliveries of the assets, funds and property belonging to said benevolent trust estate, a charitable institution and organization, were made and based upon a false and fraudulent



report made by the aforesaid [22] defendant Norman Hayward, Internal Revenue Agent and Collector, as set forth herein, for the purpose of creating additional income taxation by aforesaid and said fraudulent unconstitutional confiscations, assignments, transfers and deliveries from the said benevolent trust estate to the personal account of William D. Noland personally, a complainant hereof.

## 17.

Complainants further allege, that the trustees of the board of trustees for the aforesaid benevolent trust estate, in making the federal income tax returns for the year of 1942, they paid in error the sum of Thirty-five and 64/100 (\$35.64) Dollars, and for the year 1945 they paid the sum of One Hundred Eighty Three and 36/100 (\$183.36) Dollars. to the Internal Revenue Service at Los Angeles, California, and that under date of March 8, 1944, complainants received a letter addressed to Dr. William D. Noland Trust Estate, Ltd., William D. Noland, Trustee, advising the aforesaid trustees for the aforesaid benevolent trust estate, in relation to a credit of \$8.91 paid 9-15-43, that when filing the 1943 income tax return for the said benevolent trust estate, to attach carbon copy of said letter to the face of form 1041 for identification with the overpayment being held in a suspense account, which is to be credited to said form 1041, and the said letter was signed by Harry C. Westover, Collector, by W. H. Pearson, Cashier, and

complainants contend that the said amounts of \$35.64 and \$183.36, paid as income taxes for the years of 1942 and 1943 have been paid in error by the aforesaid trustees of the said benevolent trust estate to the aforesaid Internal Revenue Service, which said amounts total the sum of \$219.00, and complainants contend that the said amount was not owed to the said Internal Revenue Service nor any other amount as income tax was owing or due to the said Internal Revenue Service by the trustees for said benevolent trust estate, nor by the complainants hereof. [23]

## 18.

Complainants further allege, that claims were filed with the aforesaid Internal Revenue Service for the amounts of the aforesaid \$35.64 and \$80.45 on or about March 15, 1946, at Los Angeles, California, and to date the said Internal Revenue Service have not affirmed or denied said claims.

## 19.

Complainants further allege, that William D. Noland is not paid and does not receive any salary, wages or profits from the aforesaid benevolent trust estate, and that his personal living expenses are paid from the funds of the said benevolent trust estate as benevolent trust expense.

## 20.

It is further alleged by the complainants hereof, that during the time that case No. 5716-W, William D. Noland et al., trustees, vs. George D. Martin,

Internal Revenue Agent in Charge, et al., was pending in the above entitled United States District Court, and said action was a personal damage action having no connection with this said above entitled action, that the aforesaid trustees of the board of trustees for the aforesaid benevolent trust estate, received another notice and statement for additional income taxes due and payable, dated December 11, 1946, in the sum of \$1245.13, penalty \$62.26, interest \$202.09, making a total sum of \$1509.48 for the year of 1943, and also under the date of March 28, 1947, another notice and statement was received by the said trustees, of income tax due as a balance due on the year of 1942 income tax amounting to the sum of \$19.85, after the aforesaid income taxes for the years 1937 in the sum of \$80.45 and 1942 in the sum of \$35.64 were paid as aforesaid.

21.

Complainants further allege, that there was further received under the date of March 28, 1947, another tax notice and [24] statement for the sum of \$19.65 as income taxes due and payable for the year of 1942, as a balance of income tax due and payable, as aforesaid with threats of enforcing collection of aforesaid amounts as claimed as additional income taxes, and the aforesaid case No. 5716-W in the above entitled United States District Court was dismissed on or about January 9, 1947, without prejudice, and complainants contend and claim that due to the fact that the aforesaid benevolent trust estate, operates and conducts all business



as a benevolent and charitable organization without profit, and is a non-profit and charitable organization, that complainants do not owe said or aforesaid amounts paid or charged by aforesaid Internal Revenue Agents as income taxation, and although some of the income taxes have been paid, with and without interest, the complainants do not and did not owe such income tax as was paid, as it was paid in error by the complainants.

## 22.

Complainants further allege, that on or about June 29, 1947, complainants received under date of June 27, 1947, a further notice and statement demanding an additional income tax for the year of 1943, in the sum of \$1509.48, with interest in the sum of \$51.72, which made a total sum of \$1561.20, against the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., and complainants contend that the said amount of \$1561.20 is not due and owed as income tax to the aforesaid Internal Revenue Agents and Service, and any amounts which have been paid as income taxes by complainants, William D. Noland, Trustee, or William D. Noland personally, have been paid in error, and complainants contend that they do not owe any of the aforesaid amounts which have been claimed for income taxes by the aforesaid Internal Revenue Agents and Service, because this amended complaint and the exhibits filed herewith in support of said complaint and the law clearly show no income tax is owed. [25]

## 23.

Complainants further allege, and contend, that Section 167, of the Federal Internal Revenue Code, which provides, that where the trustor, trustee and beneficiary, in a trust estate, are one and the same, the income taxes are charged to and payable by the trustor, which said Section 167, is cited by the aforesaid Internal Revenue Agents and Service, in support of the aforesaid charges and demands made by the said Internal Revenue Agents, for additional income taxes, and complainants contend that the said Section 167 does not apply to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., because the trustor, trustee and beneficiary are not one and the same, and that instead the said benevolent trust estate, has a board of trustees, which are plural in numbers, and it shown by this complaint and exhibits, that there are more than one trustee, and a board of trustees, and that there are numerous beneficiaries, therefore, the said Section 167 does not apply to the said benevolent trust estate and complainants hereof.

## 24.

Complainants further allege and contend, that the contract and agreement under which the aforesaid benevolent trust estate, is organized and established, a copy of which is filed herewith as exhibit A shows that it is a benevolent and charitable organization, for the benefit of poor people and children, and the said benevolent and charitable work for said poor people and children have been carried

on since June 1st, 1935, and is now being carried on, and the said benevolent trust estate and charitable work, is supported by the Federal Internal Revenue Code of the United States of America, particularly, under Title 26, Internal Revenue Code, Section 23, Deductions from gross income, and in computing net income there shall be allowed as deductions: (a) expenses; (1) In general. (o) Charitable and other contributions; (2) charitable [26] organizations, and Section 120 under said Title 26, Internal Revenue Code, provides unlimited deductions for charitable and other contributions, and complainants contend that under Title 26, Internal Revenue Code, Section 23, Subd. (a) Par. (1), Subd. (o) Par. (2), and Section 120, are the laws which govern the operations of the aforesaid benevolent trust estate and the complainants hereof, and section 167 of the Federal Internal Revenue Code is not applicable in any shape form or manner to the said benevolent trust estate and complainants.

25.

Complainants further allege and contend, that the assets, funds and property belonging to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., which have been assigned, transferred and delivered to the account of William D. Noland personally, by the aforesaid Internal Revenue Agents for the aforesaid Internal Revenue Service, for the purpose of additional income taxation, as shown by this complaint and exhibits filed herewith in support of said complaint,

are fraudulent unconstitutional confiscations of the assets, funds and property belonging to the said benevolent trust estate, and complainants contend that they do not owe any of the aforesaid amounts which have been paid and charged to the said benevolent trust estate, William D. Noland, Trustee, and William D. Noland, personal, as all such charges for income tax against complainants hereof for income tax and additional income tax are fraudulent and unconstitutional and in violation of the aforesaid sections and subdivisions of the Internal Revenue Code and also in violation of the Constitution of the United States under the provisions for contracts and due process of law.

## 26.

Complainants further allege and contend, that the assets, funds and property belonging to the aforesaid benevolent trust estate, [27] which have been assigned, transferred, and delivered to William D. Noland personally for additional income taxation by the aforesaid Internal Revenue Agents have been done so without the consent and permission of the complainants and trustees of the board of trustees for said benevolent trust estate, and the complainants contend that the aforesaid and said assignments, transfers and deliveries of property, funds and assets of said benevolent trust estate, to the personal account of William D. Noland personally, are fraudulent unconstitutional confiscation of the said assets, funds and property by the afore-



said Internal Revenue Agents and the Internal Revenue Service without due process of law.

Wherefore, complainants pray for process and judgment as follows:

1. That Section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., nor to the complainants, William D. Noland, Trustee, or William D. Noland personally, and that any attempt to apply or make such application of said Section 167, to said benevolent trust estate or complainants is null and void of such application and of no effect whatsoever.

2. That complainant William D. Noland, Trustee, for aforesaid benevolent trust estate, does not have to file any income tax return and that the said complainants William D. Noland, Trustee, and William D. Noland personally, do not owe the Internal Revenue Service or its Agents any income taxes of any kind whatsoever.

3. That since William D. Noland personally has made and executed a contract with the trustees of aforesaid benevolent trust estate, as a charitable organization, to give his skill, knowledge and labor to the said benevolent trust estate and its trustees, for the benefit of the beneficiaries who are poor people and children who are unable to pay for health service; without [28] salary, wages or profit, and that said contract is a valid and lawful contract and that the complainant William D. Noland had a lawful right to make said contract, therefore, the

said complainant does not owe any income taxes, as there is no income from salary, wages or profit from the said benevolent trust estate.

4. That complainant William D. Noland, Trustee, is a party to the contract under which the aforesaid benevolent trust estate is established and that it be adjudged and decreed that the said contract is a valid and lawful contract, and that the said benevolent trust estate is a charitable organization.

5. That it be adjudged and decreed that the matters which are involved herein, are subject to the provisions under Title 26, Internal Revenue Code, Section 23, Subdivision (a) Paragraph (1), Subdivision (o) Paragraph (2), and Section 120, as the law that governs and rules instead of Section 167 of the Federal Internal Revenue Code.

Wherefore, complainants pray for such other order, orders, aid and relief as the court may deem proper and just in the premises.

Dated: Los Angeles, California, April 15, 1948.

/s/ WILLIAM D. NOLAND,

Trustee, Dr. William D. Noland Trust Estate, Ltd.,  
a Benevolent Trust Estate. In Propia Persona.

/s/ WILLIAM D. NOLAND,

Personal. In Propia Persona.

(Duly Verified.)

Exhibits A to I inclusive filed herewith in support of this second amended bill of complaint.

Received copy of the within second amended bill of complaint this 19th day of April, 1948.

/s/ JAMES M. CARTER,

By /s/ VELORUS BONHUS,

Attorney for .....

[Endorsed]: Filed April 19, 1948. [30]



[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF SECOND  
AMENDED BILL OF COMPLAINT

State of California.

County of Los Angeles—ss.

William D. Noland, Trustee, and William D. Noland, Personal, being first duly sworn, deposes and says: That the attached copy of the Benevolent Trust Estate, namely, Dr. William D. Noland Trust Estate, Ltd., is a true and correct copy of the original contract and it was recorded in public recording offices of Arizona and California, following the execution of contract establishing said Benevolent Trust Estate, and is marked "Exhibit A" for identification in support of Second Amended Bill of Complaint.

/s/ WILLIAM D. NOLAND,  
Trustee.

/s/ WILLIAM D. NOLAND.  
Personal.

Subscribed and sworn to before me on this 9th day of April, 1948.

/s/ RICHARD M. GOUGH,  
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires May 18, 1948. [31]

## EXHIBIT "A"

## A BENEVOLENT TRUST ESTATE

Contract and Agreement Embodying the Following Terms, Conditions, Stipulations, Acceptance and Covenants to Establish a Benevolent Trust Estate to be Administered by Natural Person Trustees in Joint Tenancy, Holding in Trust as to Distribution of Avails, Acting Under Citizenship, Common Law Rights of Contract, and Constitutional Rights, Federal Laws and Immunities Vouchsafed to All Persons, as Set Forth and Provided in and by the Constitution of the United States of America.

The business name of the Trustees is Dr. William D. Noland Trust Estate, Ltd., with Executive Offices and Headquarters, 311 North Second Avenue, Phoenix, Arizona, U.S.A., and a branch office located at 3944 Wilshire Boulevard, Los Angeles, California.

This Conveyance, Acceptance, Stipulation and Covenant, made and entered into this first day of June, 1935, by and between William D. Noland, Peggy A. Archer and Audney E. Spillman, each of whom are citizens of the United States and residents therein.

William D. Noland, hereinafter designated as the Conveyer, who conveys, transfers, assigns, sells and delivers unto the said named persons herein, property to constitute the initial benevolent trust estate, and the said

William D. Noland, Peggy A. Archer and Aud-

Exhibit "A"—(Continued.)

ney E. Spillman each of whom are herein, hereby and hereinafter designated as the Trustees of this estate, and hereby the joint tenancy holders, who, with associate or successor trustees, are by virtue herein to act collectively under the business name herein designated.

Witnesseth:

That, for and consideration of One Dollar (\$1.00), and other valuable consideration, the objects and purposes herein, the aforesaid Conveyor does hereby assign, sell, convey, transfer and deliver unto the said named [32]

William D. Noland, Peggy A. Archer and Audney E. Spillman, Trustees of the Board of Trustees of this Benevolent Trust Estate, created and established by this contract and agreement, the property assigned, conveyed and sold, delivered herein to aforesaid Dr. William D. Noland Trust Estate, Ltd., to constitute the initial benevolent trust estate, is herewith described as follows to-wit:

ROOM No. 1	6 Ash Trays
1 Chesterfield	1 Coffee Table
1 Radio	
1 End Table	
1 Gas Heater	ROOM No. 2
2 Lamps (1 floor) (1 table)	2 Chairs (easy)
3 Occasional Chairs	1 Occasional Table
1 Ottoman	1 Magazine Rack
1 Large Easy Chair	1 Tapestry
7 Pair Curtains	2 Pair Curtains
2 Pair Drapes	1 Pair Draw Drapes
1 Rug—9'x12'	1 Screen
1 Rug—6'x8'	2 Flower Bowls
3 Scatter Rugs	2 Flower Holders

## Exhibit "A"—(Continued.)

ROOM No. 3	ROOM No. 4—(Cont'd)
2 Office Desks	1 Otoscope (set complete) (Welch-Allen)
1 Typewriter	1 Utility Kit
1 Typewriter Stand	3 Probes (metal)
3 Occasional Chairs	3 Applicators (metal)
3 Ash Trays	2 Grooves
5 Pair Curtains	3 Bandage Shears
3 Pair Drapes	4 Tweezers
1 Gas Heater	2 Surgical Lances
1 Treating Table	4 Instrument Knives
1 Obstetrical Table	3 Vaginal Speculums
3 Chairs (straight)	3 Rectal Speculums
3 Pair Drapes	8 Hemostats (throat, Vaginal, Rectal)
3 Mirrors (plate glass)	3 Speculums (nasal)
3 Dressing Tables	2 Concurror (Diagnosal)
1 Rug—9'x12'	1 Blue Sunlight Glass Set with Focalizers Complete (Re- flector)
1 Runner—27"x9'x3"	2 Sets "PH" Indicators (lit- masin) P H
2 Office Desk Chairs	1 Set Urinalcalysis Testers
1 Rug Silencer	2 Applicator Containers (Chrome)
1 Waste Paper Basket	1 Cotton Container (metal)
1 Telephone Stand	14 Glass jars with Covers (Asst. sizes)
2 Pillows	1 Replaca (inst)
2 Blankets	6 Wine Glasses
1 Cow Hide, felt and scrap leather	4 Eye Cups
1 Set for Orthopedic Work	3 Graduates—20 C.C.
	3 Morton
	3 Funnels—2
	2 Atomizers eqp.
	2 Atomizers ear
	2 Atomizers eqp.
	2 Magnifying Glass
	2 Stethoscopes
	1 Pair Goggles
	(Full stock of Chemicals, Herbs, Drugs for Emergencies, band- ages, cotton, etc.)
	200 Towels—"Huck"
	24 Turkish Towels
	4 Pair Curtains
	4 Professional Gowns
	18 Sheets
	12 Pillow Cases
ROOM No. 4	
1 Instrument & Medical Cabinet	
1 Mayo Table	
1 Gas Heater	
2 Straight Chairs	
2 Electric Heaters	
1 Sterilizer	
2 Trash Cans	
1 Spot Stand Lamp	
1 Treatment Table	
1 Utility Table	
1 Utility Cabinet	
1 Towel Hamper	
1 Infra-Red Ray Lamp	
4 Utility Pans	
1 Mirror (plate glass)	
2 Tri-way Irrigators	
2 Chemical Bags (fountain)	
6 Douche—6 Colon tubes	
2 Ice Bags (large)	
2 Ice Bags (throat)	

Exhibit "A"—(Continued.)

ROOM No. 4—(Cont'd)		ROOM No. 7	
2 Pillows	[34]	1 Chair	
1 Full Length Rubber Sheet		1 Bed—Twin size & bedding	
1 Half Size Rubber Sheet		(brown)	
18 Gowns for Patients		1 Chest of Drawers	
2 Emergency Kits		2 Scatter Rugs	
3 Operating Rubber Gowns		2 Pair Curtains	
1 Tonsil & Throat Cleansing		1 Table Lamp and Shade	
Equipment		ROOM No. 8	
		1 Stand Lamp & Shade	
ROOM No. 5		1 Bed—Twin Size & Bedding	
1 Ice Refrigerator		1 Chest of Drawers	
1 Gas Range		2 Stand Tables	
1 Dining Table		3 Scatter Rugs	
6 Dining Chairs		3 Plaid Curtains	
1 Ironing Board		INCIDENTALS	
6 Plates—Dinner		5 Guns	
6 Plates—Salad		1 set Boxing Gloves	
6 Cups & Saucers		1 set Athletic Equipment	
1 Large Salad Bowl		2 Trunks	
4 Bowls—Asst. Sizes		4 Suitcases	
6 Glass Tumblers		1 Bronze Bust of Napoleon	
1 Set Silverware		1 Dorlands Medical Dictionary	
2 Compartment Plates		2 Desk Blotters Holders—	
2 Pitchers—Water		Brown & Tooled Leather	
2 Pitchers—Cream		1 Desk Library	
3 Fruit Juice Reamers		1 Fountain Pen Holder	
2 Sets Salt & Pepper		1 Calendar—Leather	
4 Vegetable Dishes		1 Baumanometer	
2 Oven Baking Dishes		9 Scatter Rugs	
6 Kitchen Towels—Hand		18 Sheets	
9 Dish Towels		12 Pillow Cases	
1 Set Cutlery (Kitchen)		2 Bath Mats—Coral & Black	
Kitchen Utensils		4 Pair Curtains	
Set of 9 Cooking Utensils		2 Pair Drapes	
3 Pair Curtains		1 Set of 22 Leather Bound	
1 Coffee Pot—Drip		Books	
1 Tea Pot		1 Set of 10 Prof. Books	
		93 Books on Foot Correction	
ROOM No. 6		36 Bound Manual & Books	
1 Waste Paper Basket		9 Professional Note Books	
1 Dresser—Green		Fiber Bound	
1 Bed "Full Size Double"		1 Seal Stamp	
with Spring & Mattress		1 Set Letterhead Cuts	
and Bedding—Green		1 Set Diploma Cuts	
1 Table Stand—Green		1 Class Manual—Leather	
3 Scatter Rugs		Bound	
2 Chairs		18 Note Books	
4 Pair Curtains		3 Files and Contents	
		1 Set cuts and Pictures for	



## Exhibit "A"—(Continued.)

INCIDENTALS—(Cont'd)	8 Books of Ledgers and Case
Cuts for Noland System	Records (Photographs)
of Foot Correction	personal & family

## PERSONAL

One (1)—96/100 Caret Diamond Tie Pin

One (1)—12 Cylinder Cadillac Convertible Coupe Automobile  
—1931 Model

Said Cadillac Automobile is described as follows:

License Number	—5 R-9979
Make and Cyls.	—Cad. 12
First Sold	—9-15-31
Date issued	—2-5-35
Serial Number, Same	
Engine Number	—1004797
Type	—Convertible Coupe

One (1)—Safety Deposit Vault Box at Security First National Bank of Los Angeles, Branch No. 142, located at Wilshire Boulevard near La Brea Avenue, Los Angeles, California; Box Key No. 2057 to said Deposit Box; Subject to rental agreement with said Bank. Five Dollars (\$5.00) lawful United States Money. [37]

Property of all kinds, real and personal, may be leased, chartered, subleased, rented, operated, purchased, owned, bought, sold, mortgaged hypothe-cated; borrow and loan money; prosecute and defend law suits, all of which may be performed and executed by the Trustees.

Trustees may enter into and conduct any and all kinds of business and may do all things necessary to be done in any business they may enter into and that will be beneficial to the estate herein, and property herein conveyed and delivered is hereby accepted to constitute this initial benevolent trust estate as herein provided.

The Trustees may be three (3) in number or less, and shall hold office by appointment or ma-



## Exhibit "A"—(Continued.)

jority vote of the Trustees, and other trustees may be added as herein provided, to fill vacancies.

Trustees shall hold office as herein provided, except for death, resignation, malfeasance in office or obvious tort.

Trustees shall hold title to all property in trust as herein provided. Filing and recording this instrument in the County Recorder's Office, in the City of Phoenix, County of Maricopa, State of Arizona, U. S. A., shall be notice to the entire world that all obligations and debts of this estate must look to the assets and funds of this estate for payment of all obligations and debts, and the trustees, members, beneficiaries or representatives connected in any manner with this estate, shall not be held personally for obligations and debts of this estate beyond the assets and funds of this estate, and said obligations and debts of this estate shall not jeopardize their personal holdings or any estate they may administer or assist to administer, and the Trustees shall give due notice to this effect upon all documents pertaining to any business that is done for or with this estate in all important transactions. [38]

The Trustees may do any and all things that will be benevolent to poor children, women and men, or organizations who are worthy of benevolent assistance from this estate in the discretion and judgment of the Trustees.

The Trustees may receive donations, gifts and other things of all kinds, by will or otherwise, and

## Exhibit "A"—(Continued.)

may make donations and gifts for benevolent purposes in the discretion and judgment of the Trustees.

The duration of this benevolent Trust estate shall be for twenty-one (21) years after the death of the last surviving subscribing Trustee hereto, and in each and every twenty-one (21) year period from the date hereof, this contract and agreement shall automatically renew itself, consecutively, twenty-one (21) years after the death of the last surviving subscribing trustee in each and every twenty-one (21) year period from the date hereof, during the life and existence of the Constitution of the United States.

The Trustees shall use the suffix "Ltd." in conjunction with their business name to qualify the limited liability of the Trustees and others as provided herein.

The Trustees may extend or amend the terms and conditions of this contract and agreement by recording all extensions or amendments at all places wherein this contract and agreement have been formerly recorded, and may perform and execute a dissolution at any time, by recording said dissolution, at all places wherein this contract and agreement have been formerly recorded, providing that all things done herein are for a good and sufficient reason for the benefit of the estate as herein provided.

Regular or special meetings may be provided for by the Trustees, and all special meetings must be

## Exhibit "A"—(Continued.)

called by giving ten (10) days written notice to each Trustee, by mailing to the last known address of each Trustee of record in the records of the Trustees, and the signatures of all the Trustees to the minutes of any meeting shall be a final validation of the acts of the Trustees at each meeting.

The Trustees may choose and select a bank as the depository for the funds of this estate in lieu of a treasurer.

The Trustees when in doubt as to the validity of any contemplated act may, through their counsel who is admitted to practice in the United States Court, apply to the Honorable United States District Court for instructions as to the validity of such act, and said instructions shall govern the Trustees.

Fiscal reports may be made annually by the Trustees on a date to be mutually agreed upon by the Trustees.

The Trustees are hereby restrained and enjoined from any actual or pretended "issue and/or sale" of capital stock, such being a corporation prerogative, nor shall the Trustees "issue and/or sell" shares of undivided interests in the estate properties, such being a co-partnership act, either of which would be prejudicial of the purity of estate trust in this creation and establishment of this Benevolent Trust Estate, and in contravention of the fundamental of the trust estate principles and policies herein employed, set forth and provided.

## Exhibit "A"—(Continued.)

The purport of the creation and establishment of this Benevolent Trust Estate, through this instrument and the jurisdiction thereof, as set forth and provided herein, is to establish evidence of this organization, to evidence the conveyance and assignment, and acceptance of property as described herein, equities, properties, funds, and all things of value to the Trustees to constitute the trust in this estate of the Trustees, and a distinct holding of this Benevolent Trust Estate, title to be held, in all properties of this estate, in Joint Tenancy Holding by the Trustees, perpetuated beyond interruption by death of any Trustees [40] or Trustee, or persons, as provided herein, and to provide for sale and conservative and economical management and administration of this pure Benevolent Trust Estate by natural persons who are qualified by human attributes, and Citizen Trustee Rights.

The Trustees may, at any time in their discretion and judgment, pay any and all expenses incurred and accrued in the operation and administration of this estate, from any available resource or funds of this estate, as provided herein, during the life and existence of this Benevolent Trust Estate.

All persons, organizations and institutions, of all kinds, individually or collectively, who are eligible or qualified to become members or committees of this organization of members, subject to the rules



## Exhibit "A"—(Continued.)

and regulations of the Trustee as set forth and provided in the records of the Trustees, and as such may become members or committees of this organization of members, and all members shall subscribe to the terms and conditions as set forth and provided herein, and all members agree to support morally and otherwise the principles and policies of this organization, as set forth and provided herein, for the purpose of advancing the welfare and progress of this organization on the interests of this estate, its Trustees, its Members, also advancing in a scientific manner for the benefit of humanity.

All committees shall be selected and appointed by the Trustees from among the members, and the Trustees may appoint a chairman or chairmen of each committee or committees appointed by the Trustees.

All members and Trustees' names and addresses shall be written in full in the Trustees' records, which record shall be kept especially for this purpose, and known as the "Register of Members" which shall be kept in the custody of the Trustees, and the Trustees' records shall be subject to the provisions of the Constitution, Federal Law and Immunities of the United States of America. [41]

The Trustees may appoint or elect committees for any and all purposes deemed advisable in the discretion and judgment of the Trustees. An advisory committee may be established or any other



## Exhibit "A"—(Continued.)

committees, for anyone or numerous purposes, may be established when deemed advisable by the Trustees.

The Trustees may, in their discretion and judgment, call all members, trustees, committees or beneficiaries to meet at any time when deemed advisable, annually or otherwise, to hear and discuss reports, or any other matters that may arise, such as organization improvement and betterment, or anything else that may be considered as important to be brought before the members and committees of this organization, and while the members, committees or beneficiaries at any meeting or meetings may adopt resolutions of approbation or protest, no act or resolution of the members, committees or beneficiaries, shall be construed as mandatory over the Trustees, nor in any manner to embarrass or question the rights of the Trustees to exclusively manage, control, administer, and hold legal title to the trust estate properties and funds of this estate, for the full term and life of the existence of this Benevolent Trust Estate, as provided herein.

The Trustees shall be elected and appointed by a vote or appointment of the Trustees as herein provided only, as a violation of this act would subject this organization to many liabilities and impositions which do not apply to this pure Benevolent Trust Estate, as set forth and provided herein, and as provided in and by the Constitution, Federal

## Exhibit "A"—(Continued.)

## Laws and Immunities of the United States of America.

In the event of death of a Trustee the remaining Trustee or Trustees may elect or appoint a Trustee or Trustees, and if the Board of Trustees should become entirely vacant from any natural cause, or through an Act of God, last wills and testaments [42] of the natural Trustees and joint tenancy of the life of this trust estate contract and agreement may name the successors to act for the benefit of this trust estate as provided herein.

The President of the Board of Trustees shall be William D. Noland and the Secretary of the Board of Trustees shall be Peggy A. Archer and such is unanimously voted and resolved by the Trustees.

Schedules held by the Trustees and inventories they may make from time to time will more specifically describe the joint tenancy holding of this trust estate.

Trustees may act informally over their signatures collectively, or in their designated business name as herein provided and as exemplified and set forth in this instrument, in the manner herewith as an example in the closing of this contract and agreement.

We Hereby Subscribe Ourselves, the day and date herein written, in confirmation and acceptance of the property herein described and the terms and

## Exhibit "A"—(Continued.)

conditions of this contract and agreement as set forth and provided herein.

/s/ WILLIAM D. NOLAND,  
Conveyor.

Trustees:

(Seal)

WILLIAM D. NOLAND,  
Signature of William D. Noland, Trustee.

PEGGY A. ARCHER,  
Signature of Peggy A. Archer, Trustee.

AUDNEY E. SPILLMAN,  
Signature of Audney E. Spillman, Trustee. [43]

The said Trustees, in their collective capacity as a Board of Trustees, have hereunto subscribed confirmation in their Business Name, by duly authorized officers of their Board and have caused their Business Name and Common Seal to be affixed hereto as provided and set forth in this instrument.

(Seal)

/s/ WILLIAM D. NOLAND,  
President.

/s/ PEGGY A. ARCHER,  
Secretary of the Board of Trustees.

Exhibit "A"—(Continued.)

ACKNOWLEDGMENT

This Is To Certify, That William D. Noland, Peggy A. Archer, and Audney E. Spillman personally known to me, appeared in person before me, a Notary Public in and for the County of Los Angeles, State of California, and signed the foregoing instrument admitting to me that they signed the said instrument as their voluntary free, sane act and deed for the uses and purposes therein set forth and provided on the 6th day of June, 1935.

(Seal)                      NORMA IVERSEN,  
Notary Public in and for the County of Los  
Angeles, State of California.

My commission expires March 29, 1939.

Received copy of the within this 19th day of  
April, 1948.

JAMES M. CARTER,  
By /s/ VELORUS BONHUS,

Attorney for .....

[Endorsed]: Filed April 19, 1948.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF SECOND  
AMENDED BILL OF COMPLAINT

State of California,  
County of Los Angeles—ss.

William D. Noland, Trustee, and William D. Noland, Personal, being first duly sworn, deposes and says:

That the attached papers are true and correct copies of the original papers and are marked "Exhibit E" for identification, in support of Second Amended Bill of Complaint.

/s/ WILLIAM D. NOLAND,  
Trustee.

/s/ WILLIAM D. NOLAND,  
Personal.

Subscribed and sworn to before me on this 19th day of April, 1948.

/s/ RICHARD M. GOUGH,  
Notary Public, in and for the County of Los Angeles, State of California.

My commission expires May 18, 1948. [45]



## EXHIBIT "E"

Form 1202

Treasury Department  
Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Seal January 26, 1945

Office of Internal Revenue Agent in Charge,  
Los Angeles Division.

LA:30D

Dr. William D. Noland, Trust Estate, Ltd.  
William D. Noland, Trustee  
3944 Wilshire Blvd., Los Angeles, California.  
Dear Dr. Noland:

I enclose a copy of the report of the examination of your income tax returns for the year 1943. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year	1943	
Additional tax	\$1,061.77	
Penalty	53.09	
Total Additional Tax and Penalty		\$1,114.86

If You Agree to this adjustment, the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and penalties and to stop the accumulation of interest. Such interest will cease 30 days after the receipt of the executed form, or upon the payment of the additional tax and penalties to the collector, whichever occurs first.

## Exhibit "E"—(Continued)

If you desire to make immediate payment of the additional tax and penalties without awaiting assessment, you should forward your remittance to the Collector of Internal Revenue at Los Angeles 12, California, enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed [46] at the rate of 6 per cent per annum for the due date of the first installment to the date of the payment.

If You Do Not Agree to the adjustments in tax and the penalties proposed, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration and, if you so request, an opportunity for a hearing in this office will be granted you prior to final determination of any deficiency, against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to pay the additional tax and penalties to the collector of internal revenue or to file with this office within the 30-day period mentioned either a waiver on the enclosed form or a written protest, final determination of your tax and penalty liability will be made and a notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income and profits tax deficiencies.

## Exhibit "E"—(Continued)

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

GEORGE D. MARTIN,  
Internal Revenue Agent in Charge.

Enclosures: Report of examination. Form of waiver 870. Form of acknowledgment. [47]

Name: WILLIAM D. NOLAND

Year: 1942

Net income disclosed by return Form 1041 No. 1453688..\$ 287.63

Add: The detail of income and expenses is shown on the next sheet attached. Under Sec. 167 of the Internal Revenue Code where the trustee and trustor and the beneficiary are the same the income is taxable to the

Trustor ..... 3,935.47

\$4,223.10

Net income as adjusted.....\$4,223.10

Less: Personal Exemption .....\$500.00

Credit for Dependents..... 350.00 850.00

Balance, surtax net income..... \$3,373.10

Less: Interest on Liberty Bonds, etc.

Earned income credit.....\$422.31

\$ 422.31

Balance, subject to normal tax.....\$2,950.79

Normal tax at 6%.....\$177.05

Surtax ..... 479.70

Total Tax ..... \$ 656.75

Less: Income tax paid at source.....

Income tax, foreign country.....

Tax liability as adjusted..... \$ 656.75

Tax previously assessed: Original.....

Subsequent: List .....

Overassessment allowed .....

Additional tax Overassessment

Date of report: November 3, 1944.

JOHN H. CRAMER,  
Internal Revenue Agent.

[48]

## Exhibit "E"—(Continued)

## WILLIAM D. NOLAND

## Adjustments to business income:

Description	Amounts per return 1041	Adjust- ments	Amended Income & Expenses
Fees received .....	\$11,233.50		\$11,233.50
Expenses:			
Salary of Nurses & Secretary	2,625.00		2,625.00
Rent .....	1,800.00	\$600.00*	1,200.00
Support W. D. Noland, Jr.....	300.00	300.00***	-----
Laboratory, etc. ....	1,715.37	571.79*	1,143.58
Taxes on fixtures .....	4.17	-----	4.17
Office supplies, etc. ....	931.56	931.56**	-----
Automobile expense .....	1,098.25	549.12***	-----
Ice .....	53.30	-----	53.30
Plumbing and electrician.....	13.76	4.58*	9.18
Laundry and sanitation.....	434.24	144.75*	289.49
Attorney fees for litigation....	265.00	265.00***	-----
Printing .....	326.63	-----	326.63
Utilities, etc. ....	265.49	88.49*	177.00
Internal Revenue, etc.....	220.68	220.68**	-----
Dues .....	26.00	-----	26.00
Gardner, etc. ....	129.00	129.00**	-----
Water, chemicals, etc.....	606.92	-----	606.92
Charity, etc. ....	130.50	130.50**	-----
Net income.....	\$ 287.63		\$ 4,223.10

\* Items which are adjusted by one-third include expenses of the entire household two-thirds of which is devoted to the profession. Taxpayer is living in the other portion of the house.

\*\* Items restored to income through lack of information as to what constitutes professional and personal expense.

\*\*\* Items restores to income to eliminate personal expense.

These items of income and expense were shown on a Fiduciary return Form 1041 filed in error. [49]

William D. Noland

Year 1943

## Schedule No. 1

## Adjustments to Net Income

Form 1041 No. 188370	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$ 993.98	\$ 993.98
As corrected .....	5,317.43	5,317.43
Net adjustment as computed below.....	\$4,323.45	\$4,323.45

## Exhibit "E"—(Continued)

Form 1041 No. 188370	Income Tax Net Income	Victory Tax Net Income
Unallowable deductions and additional income:		
(a) adjustments eliminating personal expenses and taxing the net income disclosed to the taxpayer instead of to a trust as shown in detail by Schedule 1 (a).		
These adjustments are made for the same reason as given in Schedule on Page 2.		
Total.....	\$4,323.45	\$4,323.45
Non-taxable income and additional deductions: None.		
Net adjustment as above.....	\$4,323.45	\$4,232.45
William D. Noland		

Adjustments to Business Income  
Schedule 1 (a)

Description	Amounts per Form 1041	Adjust- ments	Amended Income & Expenses
Fees received .....	\$14,263.25		\$14,263.25
Expenses:			
Wages .....	\$ 2,275.00		2,275.00
Rent .....	1,800.00	600.00*	1,200.00
Support of W. D. N., Jr.....	300.00	300.00***	.....
Laboratory, food, etc.....	3,737.19	1,245.73*	2,491.46
Tax on furnishings.....	4.09		4.09
Office Supplies, etc.....	1,080.89	1,080.89	.....
Automobile expense .....	1,119.82	559.81*	559.91
Union Ice Company.....	41.23		41.23
Laundry, etc. ....	473.98	157.99*	315.99
Attorney fees .....	484.50	484.50***	.....
Printing .....	119.70		119.70
Utilities, etc. ....	334.46	111.48*	222.98
Internal Revenue, Ins., etc....	316.89	316.89***	.....
Gardner, periodicals, etc.....	150.24	50.08*	100.16
Distilled water, etc.....	801.61	267.20*	534.41
Charity, dues, etc.....	229.67	229.67***	.....

Totals.....\$13,269.27 4,324.45 9,945.82

\* Items starred thus represent expenses of which one-third is restored to income on the grounds they represent personal expense. Taxpayer is using two-thirds of his personal residence for business purposes but is charging the total expense of operating the household to business.

\*\*\* Items starred thus are restored to income as in all instances they contain personal expenses that are not disclosed.

Net income.....\$993.98 \$5,317.43



## Exhibit "E"—(Continued)

Name of Taxpayer: William D. Noland Schedule No. 2

Year ended December 31, 1943

Computation of Income and Victory Tax—Current

Tax Payment Act of 1943

1. Income Tax net income, from Schedule No. 1.....	\$5,317.43	
2. Less: Personal exemption .....	\$ 500.00	
Credit for dependents .....	350.00	850.00
3. Surtax net income.....		4,467.43
4: Less: Certain interest on Gov. obligations earned income credit.....	531.74	531.74
5. Balance subject to normal tax.....		3,935.69
6. Normal tax at 6 percent.....	236.14	
7. Surtax on item 3.....	673.49	
8. Total income tax (item 6 plus item 7) or Total alternative tax. Schedule No.....		909.63
9. Less: Income tax paid at source: Income tax paid to a foreign country or U.S. possession, from Schedule No.....		.....
10. Balance of Income Tax.....		\$ 909.63
11. Victory tax net income.....	\$5,317.43	
12. Less: Specific exemption.....	624.00	
13. Income subject to victory tax.....	4,693.43	
14. Victory tax before credit (5% of line 13)	234.67	
15. Less: Victory tax credit 25% plus 2%....	63.36	
16. Net victory tax.....		171.31
17. Net income tax and victory tax.....		1,080.94
18. Income tax for 1942.....		656.75
19. Amount of item 17 or 18 whichever is larger .....		1,080.94
20. Forgiveness feature (Not to be used if item 17 or 18 is \$50.00 or less) (a) Amount of item 17 or 18 whichever is smaller .....	\$ 656.75	
(b) Amount forgiven (\$50. or $\frac{3}{4}$ of (a) whichever is larger) .....	492.56	
(c) Amount unforgiven .....		164.19
21. Total income and victory tax liability.....	\$ 1,245.13	
22. Income and victory tax liability dis- closed by return.....		183.36
23. Deficiency in income and victory tax.....		1,061.77
5% Negligent Penalty.....	\$ 53.09	
Total deficiency .....		\$1,114.86

Form 1302-B. Treasury Department, Internal Revenue Service, April, 1944.

Exhibit "E"—(Continued)

Received copy of the within this 19th day of April, 1948.

JAMES M. CARTER,  
By /s/ VELORUS BONHUS  
Attorney for.....

[Endorsed]: Filed April 19, 1948. [53]

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[Title of District Court and Cause.]

NOTICE OF MOTION

To Defendants: William D. Noland, Trustee; William D. Noland Trust Estate, Ltd., and William D. Noland personally and individually in Propria Persona:

Please take notice that the undersigned will bring the "Motion by Defendant Harry C. Westover for Summary Judgment", the "Motion by Defendants Other Than Harry C. Westover for Summary Judgment" (copies [54] of which motions have been served upon you), the "Objection to Motion by Defendant Harry C. Westover for Summary Judgment" (such objection having been filed by you in these proceedings on December 5, 1947), and "Objection to Motion by Defendants Other Than Harry C. Westover for Summary Judgment" (such objection having been filed by you in these proceedings on December 5, 1947), on for hearing before the Honorable J. F. T. O'Connor, United States

District Judge, in his court room in the United States Post Office and Court House Building, Los Angeles, California, on February 9, 1948, at 10:00 a.m., or as soon thereafter as counsel can be heard.

Dated: January 27, 1948.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
GEORGE M. BRYANT,  
Assistant United States  
Attorneys.

EUGENE HARPOLE and  
LOREN P. OAKES,  
Special Attorneys,  
Bureau of Internal Revenue.

By EUGENE HARPOLE,  
Attorneys for Defendants.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Jan. 27, 1948. [55]

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[Title of District Court and Cause.]

MOTION BY DEFENDANT HARRY C.  
WESTOVER FOR SUMMARY  
JUDGMENT

Comes now the above defendant Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division (here-

inafter referred to as the above defendant Collector of Internal Revenue) by and through his counsel James M. Carter, United States Attorney for the Southern District of California, E. H. Mitchell and George M. Bryant, Assistant United States Attorneys for said district and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal [57] Revenue, and moves the court for a Summary Judgment in his favor pursuant to Rule 56, Federal Rules of Civil Procedure and/or for a Judgment in his favor dismissing the above entitled action as to him with prejudice upon the following grounds, to wit:

I.

Submitted with this Motion is the "Motion by Defendants other than Harry C. Westover for Summary Judgment". There is hereby incorporated herein by reference ground I of said Motion which is based upon principles of *res judicata*. The above defendant Collector of Internal Revenue was not a party to said case No. 5716-W but on principles of *stare decisis*, this action against said defendant Collector of Internal Revenue cannot lie since such a holding would be inconsistent with and contrary to the judgment of this Court on January 9, 1947, in said case No. 5716-W. By the foregoing Judgment the Internal Revenue Agents who made the instant determinations were held not liable for their actions in that behalf. For reasons set forth in section I of the Memorandum of Points and Au-

thorities supporting this Motion, the above action cannot be maintained against the said Collector of Internal Revenue in view of the foregoing Judgment in case No. 5716-W.

## II.

Paragraph 4 in the prayer for relief at the end of the Amended Complaint refers to refunds herein sought. Exhibit I to Amended Complaint shows the filing of two refund claims. One of said claims refers to a payment of \$80.45 on July 6, 1942, and the other refund claim relied upon by Complainants relates to the year 1942 and alleges payments of \$35.64 made on or before March 15, 1943. In other words the instant payments were made on July 6, 1942 and not later than March 15, 1943. None of such payments could in any event have been collected by the above defendant Collector of Internal Revenue since such Collector did not commence his duties as Collector of Internal [58] Revenue for the Sixth Collection District of California until July 1, 1943. As to the date when such Collector assumed his duties see paragraph 21,018, page 21,027, Volume 3 of the 1947 Prentice-Hall Federal Tax Service and Affidavit of said Harry C. Westover, which is attached hereto and hereby incorporated herein by reference.

## III to VIII, Inclusive.

For grounds III to VIII, inclusive, in support of this Motion reference is made to grounds III to VIII, inclusive, in the above "Motion by Defendants other than Harry C. Westover for Summary



Judgment''. The grounds last mentioned are hereby incorporated herein by reference.

This Motion is based upon the files, pleadings, exhibits and memoranda in this case, upon the points and authorities filed by the above defendant Collector of Internal Revenue and the other defendants concurrently herewith, upon such other points and authorities as may hereinafter be filed by the above defendant Collector of Internal Revenue and upon oral argument.

Dated: December 1, 1947.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
GEORGE M. BRYANT,  
Assistant United States  
Attorneys.

EUGENE HARPOLE and  
LOREN P. OAKES,  
Special Attorneys,  
Bureau of Internal Revenue.

By /s/ LOREN P. OAKES,

Attorneys for defendant Harry C. Westover, Collector of Internal Revenue for Sixth Collection District of California.

[Endorsed]: Filed Dec. 1, 1947. [59]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANT HARRY C. WESTOVER  
FOR SUMMARY JUDGMENT

State of California,  
County of Los Angeles—ss.

Harry C. Westover being first duly sworn, deposes and says:

I am one of the defendants in the above entitled proceeding and am the Collector of Internal Revenue for the Sixth Collection District of California with offices in the Federal Building, Los Angeles, California. I commenced my duties as such Collector on July 1, [60] 1943, and prior to that date I never held the office of nor acted as a Collector of Internal Revenue for the United States of America in the Sixth Collection District of California or elsewhere. Prior to the said date of July 1, 1943, I did not collect or receive any taxes or other funds from the above mentioned Complainants or any of them.

/s/ HARRY C. WESTOVER.

Subscribed and sworn to before me this 1st day of December, 1947.

(Seal) /s/ C. M. COMMINS,

Notary Public in and for said County and State.

[Endorsed]: Filed Dec. 1, 1947. [61]

[Title of District Court and Cause.]

MOTION BY DEFENDANTS OTHER THAN  
HARRY C. WESTOVER FOR SUMMARY  
JUDGMENT

Come now the above defendants, George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent (hereinafter referred to as the above four defendants), by and through their counsel, James M. Carter, United States Attorney for the Southern District of California, E. H. Mitchell and George M. Bryant, [62] Assistant United States Attorneys for said district and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue, and move the court for a Summary Judgment in their favor pursuant to Rule 56, Federal Rules of Civil Procedure and/or for a judgment in their favor dismissing the above entitled action as to them with prejudice upon the following grounds, to wit:

I.

This action and the amended Bill of Complaint herein (hereinafter referred to as the Amended Complaint) were filed by the above Complainants who are the same Complainants who brought the

action in this court to which was assigned Docket No. 5716-W. The above four defendants were also named as defendants in said case No. 5716-W as will appear from the records of this court in case No. 5716-W. This court will take judicial notice of its records in said case No. 5716-W and the above four defendants hereby incorporate herein by reference the pleadings and proceedings in said case No. 5716-W, including the Judgments and Orders therein entered.

In the Bill of Complaint, etc. (hereinafter referred to as the Complaint) filed by the above Complainants in case No. 5716-W, they alleged that the above four defendants “made aforesaid fraudulent confiscations, assignments, transfers and deliveries of assets from the aforesaid benevolent trust estate to the personal account of William D. Noland for the purpose of creating additional taxes without the consent and permission of the Complainants hereof” (see paragraph 16 of the said Complaint in case No. 5716-W) and said Complaint made numerous allegations to similar effect. The Amended Complaint in case No. 7315-O’C contains repetitions of these same allegations of fraud made by these same Complainants against the same above four defendants.

The first three paragraphs of the prayer for relief appearing at the end of the Amended Complaint in case No. 7315-O’C show that Complainants are seeking declaratory relief as therein set forth. Par-

agraph 7 of the prayer for relief appearing at the end of the Complaint [63] filed in case No. 5716-W when considered with the parts of the Complaint which precede the same show that likewise in case No. 5716-W the above Complainants sought the same declaratory relief which related to the same tax issues as those set forth in case No. 7315-O'C.

Paragraph 4 of the prayer for relief appearing at the end of the Amended Complaint in case No. 7315-O'C shows that the Complainants seek a refund of certain alleged tax payments. This part of the instant prayer for relief corresponds to paragraph 5 of the prayer for relief appearing at the end of the Complaint in case No. 5716-W. In said paragraph 5 Complainants sought the refund of said amounts, which included the same tax payments which are covered in the instant prayer for relief at the end of case No. 7315-O'C Amended Complaint.

The above Complainants in case No. 7315-O'C do not seek the injunctive relief which they sought in case No. 5716-W. However, all of the relief sought by these Complainants in case No. 7315-O'C is a duplication and repetition of the relief which they sought in case No. 5716-W in connection with issues therein litigated in addition to the issues relating to injunctive relief.

Since all of the issues and relief now sought by the above Complainants in case No. 7315-O'C was litigated in and denied to Complainants in case No.



5716-W, the litigation in the case last mentioned and the judgment of January 9, 1947, in case No. 5716-W results in a situation wherein the above Complainants are precluded from bringing the instant action against the above four defendants on principles of *res judicata*. The above judgment of January 9, 1947, in case No. 5716-W was entitled "Order and Judgment of Dismissal as to Defendants George D. Martin, Norman Hayward, Raymond B. Sullivan, and John H. Cramer, Internal Revenue Agents" and read as follows:

"On November 19, 1946, the said defendants, George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, Internal Revenue Agents (hereinafter referred to as the above four defendants), filed a Motion moving the [64] Court to dismiss the above action as to them upon grounds set forth in such Motion including the ground that the Complaint herein fails to state facts sufficient to justify the issuance of an injunction or the granting of any injunctive relief whatsoever herein, and the further ground that such Complaint fails to state a claim upon which relief as prayed for in the Complaint or any other relief can be granted against the above four defendants or any of them.

"The matter of the foregoing Motion by the above four defendants having regularly come on for hearing on December 4, 1946, before the Honorable Jacob Weinberger, Judge presiding therein, and the Complainant William D. Noland appearing in

propria persona on behalf of himself individually, and also as trustee of the above Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and the above four defendants appearing by James M. Carter, E. H. Mitchell and Loren P. Oakes, counsel for such defendants, and all matters relating to the above Motion having been submitted to the Court for its decision, and the Court having considered the pleadings and other papers herein filed and heard the arguments of the Complainant William D. Noland appearing in the capacities above stated and of counsel for the above four defendants concerning the foregoing matter, and the Court being fully advised in the premises, and by virtue of the law, the matters aforesaid and the grounds hereinafter mentioned, now renders its decision as follows:

“It is hereby ordered, adjudged and decreed:

“1. That the application and prayer in the Complaint and proceedings herein for an injunction or any type of injunctive relief whatsoever is hereby denied on the grounds (A) that the Complaint herein filed does not state [65] a claim upon which relief can be granted by the issuance of any type of injunction or injunctive relief, (B) that it does not appear that any irreparable injury, loss or damage will result from the failure to issue any type of injunction or injunctive relief, and (C) as to the grounds set forth in the Complaint in connection with the prayer for injunction or injunctive relief, the Complainants have plain, speedy and adequate

remedies at law to such an extent that this Court cannot properly grant any type of injunction or injunctive relief as prayed for in the Complaint herein.

“2. That the above action not only with respect to the injunctive relief therein prayed, but also as to all of its other aspects and in its entirety, is hereby dismissed as to the above four defendants on the ground that the Complaint herein filed fails to state a claim upon which relief as prayed for in the Complaint or any other relief can be granted against said four defendants or any of them.

“3. That the said defendants, George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, Internal Revenue Agents, shall have judgment for and shall recover from the said Complainant William D. Noland individually and as trustee of the said Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, in the amount of the costs of said defendants, to be taxed by the Clerk of this Court in the sum of \$20.00.

“4. That the Clerk of this Court shall enter this Order and Judgment of Dismissal.

“Dated: This 9th day of January, 1947.

/s/ JACOB WEINBERGER,

United States District Judge.” [66]

## II.

Paragraph 4 in the prayer for relief appearing at the end of the Amended Complaint herein seeks

the refund of certain tax payments. Exhibit I to the Amended Complaint discloses that refund claims were filed only as to a payment of \$80.45 relating to income tax for the year 1937 and a further item of \$35.64 relating to income tax for the year 1942. Under Sections 3772 and 322 of the Internal Revenue Code, suits for tax refunds are possible only as to tax payments as to which refund claims have been filed. Since Complainants allege no refund claims other than the above refund claims, this Court can consider only the question of refunding said amounts of \$80.45 and \$35.64, such being the only items covered by refund claims as alleged by Complainants. Exhibits A, B, C and D attached to this Motion show that none of the four defendants collected taxes or other funds from the above mentioned Complainants or any one of them. As to defendant Norman Hayward, it is admitted that this defendant had custody of the above sum of \$80.45 as more fully set forth in the above Exhibit D hereto. Even if this Court should conclude that the said Norman Hayward rather than the Collector of Internal Revenue mentioned in said Exhibit D made the collection of said item of \$80.45, the collection of such item is nevertheless immaterial because the refund thereof is barred by the applicable statute of limitations—see Ground VI in support of this Motion as subsequently set forth herein. Page 1 of plaintiffs' Exhibit I in support of the Amended Complaint herein shows that by Complainants' own admission the above payment of



\$80.45 was made on July 6, 1942, which was more than three years prior to the date of March 15, 1946, on which the instant refund claims were filed, according to Complainants' above Exhibit I. Since the above four defendants did not collect the instant tax payments, it follows that this suit against them for the refund of said payments will not lie and such four defendants are accordingly entitled to Summary Judgment on this issue. [67]

### III.

The above prayer for relief appearing at the end of the Amended Complaint herein filed and especially the first three paragraphs of such prayer seeks an adjudication herein with respect to the rights of an alleged benevolent trust estate described as the Dr. William D. Noland Trust Estate, Ltd., of which William D. Noland, H. K. Miller and Harry R. Maxwell are alleged to be the trustees. All of the above trustees and the foregoing trust are indispensable parties plaintiff, but none of the above trustees have appeared herein with the possible exception of William D. Noland, and if he has appeared herein as trustee, such appearance would not be valid or authorized in view of his adverse interest with respect to the above trust as shown by the Amended Complaint herein, and other papers herein filed by Complainants. Since the only plaintiff validly appearing herein is William D. Noland in his individual capacity, there is an absence of indispensable parties plaintiff as to all



of the other plaintiffs or Complainants named in the Complaint herein, and in view of the absence of the above indispensable parties plaintiff, the court lacks jurisdiction of the above entitled action, which relates to the foregoing trust and trustees.

#### IV.

The prayer for relief appering at the end of the Amended Complaint herein filed (see particularly the first three paragraphs thereof) in effect seeks a declaratory judgment with respect to various liabilities for Federal taxes and the seeking of such relief violates Section 274d. of the Judicial Code (Section 400, Title 28, U.S.C.A.) as more particularly set forth in the memorandum of Points and Authorities supporting this Motion and hereto attached.

#### V.

The two refund claims herein involved (copies set forth as Exhibit I to the Amended Complaint herein) are inadequate for purposes of the instant suit. (This point is more fully treated in [68] Section V beginning at page 8 of the Memorandum of Points and Authorities supporting this Motion and herewith submitted.)

#### VI.

The applicable statute of limitation is a bar to recovery as sought by the above tax refund claims.

## VII.

The allegations of the Amended Complaint and the Exhibits thereto (particularly Exhibit F to the Amended Complaint) disclose not that the assets of the instant trust were confiscated, assigned, transferred or delivered at all by the Internal Revenue Agents (as alleged in the Amended Complaint) but rather that the Commissioner of Internal Revenue determined that the earnings of the Complainant William D. Noland, from the practice of the profession of a doctor of Chiropractic were his personal earnings and taxable as such to him for Federal income tax purposes, and that certain deductions from said earnings claimed by the plaintiff were not allowable as deductions for income tax purposes under the Internal Revenue laws.

## VIII.

The Amended Complaint herein filed fails to state a claim upon which relief as prayed for in said Amended Complaint or any other relief can be granted against the above defendants or any of them. (This point is covered in detail in Section VIII beginning at page 12 of the Memorandum of Points and Authorities supporting this Motion and submitted herewith.)

This Motion is based upon the files, pleadings, exhibits and memoranda in this case and the above related case of No. 5716-W, upon the points and authorities filed by the above four defendants con-

currently herewith, upon such other points and authorities as [69] may hereinafter be filed by said defendants, and upon oral argument.

Dated: December 1, 1947.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
GEORGE M. BRYANT,  
Assistant United States  
Attorneys.

EUGENE HARPOLE and  
LOREN P. OAKES,  
Special Attorneys,  
Bureau of Internal Revenue.

By /s/ LOREN P. OAKES,

Attorneys for defendants George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, Internal Revenue Agents.

[Endorsed]: Filed Dec. 1, 1947. [70]

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EXHIBIT "A"

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANTS OTHER THAN HARRY C.  
WESTOVER FOR SUMMARY  
JUDGMENT

State of California,  
County of Los Angeles—ss.

George D. Martin being duly sworn, deposes and says:

I am one of the defendants in the above entitled

proceeding and am the Internal Revenue Agent in Charge for the United States Treasury Department, Internal Revenue Service at Los Angeles, California. I have never at any time collected or received any taxes or other funds from [71] the above mentioned complainants or any of them.

/s/ GEORGE D. MARTIN.

Subscribed and sworn to before me this 1st day of December, 1947.

(Seal) /s/ G. L. LYNCH

Notary Public in and for said County and State.

My commission expires August 23, 1949.

[Endorsed]: Filed Dec. 1, 1947. [72]

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EXHIBIT "B"

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANTS OTHER THAN HARRY C.  
WESTOVER FOR SUMMARY  
JUDGMENT

State of California,  
County of Los Angeles—ss.

Raymond B. Sullivan being first duly sworn, deposes and says:

I am one of the defendants in the above entitled proceeding and am an Internal Revenue Agent in the office of the Internal Revenue Agent in Charge

for the Treasury Department, Internal Revenue Service at Los Angeles, California. I have never at any time collected or [73] received any taxes or other funds from the above mentioned complainants or any of them.

/s/ RAYMOND B. SULLIVAN.

Subscribed and sworn to before me this 1st day of December, 1947.

(Seal) /s/ JUNE EDDY,  
Notary Public in and for said County and State.

My commission expires March 1, 1949.

[Endorsed]: Filed Dec. 1, 1947. [74]

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EXHIBIT "C"

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANTS OTHER THAN HARRY  
C. WESTOVER FOR SUMMARY  
JUDGMENT

State of California,  
County of Los Angeles—ss.

John H. Cramer being first duly sworn, deposes and says:

I am one of the defendants in the above entitled proceeding and am an Internal Revenue Agent in the office of the Internal Revenue Agent in Charge for the Treasury Department, Internal Revenue Service at Los Angeles, California. I have never at



any time collected or [75] received any taxes or other funds from the above mentioned complainants or any of them.

/s/ JOHN H. CRAMER.

Subscribed and sworn to before me this 28th day of November, 1947.

(Seal) /s/ JUNE EDDY,

Notary Public in and for said County and State.

My commission expires March 1, 1949.

[Endorsed]: Filed Dec. 1, 1947. [76]

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EXHIBIT "D"

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION BY  
DEFENDANTS OTHER THAN HARRY  
C. WESTOVER FOR SUMMARY  
JUDGMENT

State of California,

County of Los Angeles—ss.

Norman Hayward being first duly sworn, deposes and says:

I am an Internal Revenue Agent in the office of the Internal Revenue Agent in Charge for the United States Treasury Department, Internal Revenue Service, at Los Angeles, California. The complainant, William D. Noland, agreed that his income tax for the year 1937 amounted to a total [77] of \$80.45 including interest. As an Internal Revenue Agent, it is not within the scope of my duties

to accept payments of taxes on behalf of the Collector of Internal Revenue, who is the officer authorized to receive tax collections. As an accommodation to the said William D. Noland, I undertook to take the sum of \$80.45 from him and deliver the same to the Collector of Internal Revenue in July, 1942. I was acting in behalf of the said William D. Noland when I delivered the foregoing sum to the then Collector of Internal Revenue at Los Angeles, California, on July 7, 1942. I also acted in behalf of the said William D. Noland in procuring for him the receipt for him from the above Collector of Internal Revenue. In conformity with this understanding I wrote the said William D. Noland the following letter on July 24, 1942, and then transmitted to him the receipt therein mentioned:

“July 24, 1942.

“Dr. William D. Noland,  
3944 Wilshire Boulevard,  
Los Angeles, California.

“Dear sir:

“I am back from vacation, and am to-day completing and turning in the report prepared, also the returns signed for the years 1938 and 1941, now in order. The return for 1937 with cash to pay the tax liability and interest was turned in by me on July 7, 1942. The amount was tax of \$63.85, plus interest of \$16.60, a total of \$80.45.

“I enclose the Collector's receipt for this sum, which has served its purpose in my case, and to which you are of course entitled.

“The case now goes to review, and the next contact in the ordinary course of events will be from the office of the Collector.

“Yours truly,

/s/ N. Hayward,

“Internal Revenue Agent.”

The above sum of money represents the only funds from the said William D. Noland which have come into my custody in the form of tax payments or otherwise. The party collecting the foregoing sum was the [78] then Collector of Internal Revenue and I have not collected taxes or other funds at any time from the above complainants or any of them.

/s/ NORMAN HAYWARD.

Subscribed and sworn to before me this 1st day of December, 1947.

(Seal) /s/ JUNE EDDY,

Notary Public in and for said County and State.

My commission expires March 1, 1949.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed Dec. 1, 1947. [79]

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[Title of District Court and Cause]

OBJECTION TO MOTION BY DEFENDANTS  
OTHER THAN HARRY C. WESTOVER  
FOR SUMMARY JUDGMENT

Comes now William D. Noland, Trustee, afore-said benevolent trust estate, and William D. Noland

personally, complainants herein, and objects to motion by defendants, George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent; for summary judgment, upon the grounds set forth in bill of complaint and memorandum of points and authorities filed in the files of this action, which are in support of this objection.

Wherefore, Complainants pray that the said motion be denied and dismissed.

Dated: December 5, 1947.

/s/ WILLIAM D. NOLAND,

Trustee, Dr. William D. Noland Trust Estate, Ltd.,  
A Benevolent Trust Estate. In Propria Persona.

/s/ WILLIAM D. NOLAND,

Personal. In Propria Persona.

Received copy of the within objections this 5th day of December, 1947.

/s/ JAMES M. CARTER,

U. S. Attorney.

/s/ GEORGE L. BRYANT,

Attorney for Defendants.

[Endorsed]: Filed Dec. 5, 1947. [82]

[Title of District Court and Cause]

OBJECTION TO MOTION BY DEFENDANT  
HARRY C. WESTOVER FOR SUMMARY  
JUDGMENT

Comes now William D. Noland, Trustee, aforesaid Benevolent trust estate, and William D. Noland personally, complainants herein, and objects to motion by defendant, Harry C. Westover, for summary judgment, upon the grounds set forth in bill of complaint and memorandum of points and authorities filed in the files of this action, which are in support of this objection.

Wherefore, complainants pray that the said motion [83] be denied and dismissed.

Dated: December 5, 1947.

/s/ WILLIAM D. NOLAND,  
Trustee, Dr. William D. Noland Trust Estate, Ltd.  
A Benevolent Trust Estate. In Propria Persona.

/s/ WILLIAM D. NOLAND,  
Personal. In Propria Persona.

[Endorsed]: Filed Dec. 5, 1947. [84]



In the District Court of the United States,  
Southern District of California,  
Central Division.

No. 7315—O'C

WILLIAM D. NOLAND, H. K. MILLER and  
HARRY R. MAXWELL, Trustees; DR. WIL-  
LIAM D. NOLAND TRUST ESTATE, LTD.,  
a Benevolent Trust Estate, and WILLIAM D.  
NOLAND.

Complainants.

vs.

HARRY C. WESTOVER, Collector, United States  
Treasury Department, Internal Revenue Serv-  
ice, Sixth Collection District of California, Los  
Angeles Division; GEORGE D. MARTIN, In-  
ternal Revenue Agent in Charge, United States  
Treasury Department, Internal Revenue Serv-  
ice, Sixth Collection District of California, Los  
Angeles Division; NORMAN HAYWARD, In-  
ternal Revenue Agent; RAYMOND B. SULLI-  
VAN, Acting Internal Revenue Agent; and  
JOHN H. CRAMER, Internal Revenue Agent,  
Defendants.

SUMMARY JUDGMENT IN FAVOR OF  
DEFENDANT HARRY C. WESTOVER

The defendant, Harry C. Westover, Collector,  
United States Treasury Department, Internal Rev-  
enue Service, Sixth Collection District of Califor-  
nia, Los Angeles Division, having on the first day

of December, 1947, filed a Motion in the above entitled action for Summary Judgment and said Motion coming on regularly to be heard before the Court at Los Angeles, California, on March 30, 1948, the Honorable Charles C. Cavanah, Judge presiding, and the said defendant appearing by James M. Carter, United States Attorney for the Southern District of California, [85] E. H. Mitchell and George M. Bryant, Assistant United States Attorneys for said district, and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue, and the plaintiffs-complainants William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, appeared by William D. Noland, memoranda of Points and Authorities in support of the positions of the respective parties had theretofore been filed and the Court at said time heard the argument of counsel, and the Court having considered the said memoranda, arguments of counsel, together with the files, pleadings, exhibits and other memoranda in the above entitled case as well as those of the related case numbered 5716-W therefrom concluded and decided that the Motion of said defendant should be granted.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the defendant, Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, be and he hereby is given Summary judgment

against the plaintiffs-complainants, William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, for dismissal of the above entitled action and the costs of said defendant to be taxed by the Clerk of this Court in the sum of \$. . . . .

Dated: April 21st, 1948.

/s/ CHARLES C. CAVANAH,  
District Judge.

Judgment entered April 21, 1948. Docketed April 21, 1948. Book C.O.50, Page 255. Edmund L. Smith, Clerk.

(Affidavit of Service by Mail Attached.)

[Endorsed]: Filed April 21, 1948. [86]

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[Title of District Court and Cause]

SUMMARY JUDGMENT IN FAVOR OF  
DEFENDANTS GEORGE D. MARTIN,  
NORMAN HAYWARD, RAYMOND  
B. SULLIVAN AND JOHN H.  
CRAMER

The defendants, George D. Martin, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent, hav-

ing on the first day of December, 1947, filed a Motion in the above entitled action for Summary Judgment and said Motion coming on regularly to be heard before the Court at Los Angeles, California, on March 30, 1948, [88] the Honorable Charles C. Cavanah, Judge presiding, and the said defendants appearing by James M. Carter, United States Attorney for the Southern District of California, E. H. Mitchell and George M. Bryant, Assistant United States Attorneys for said district, and Eugene Harpole and Loren P. Oakes, Special Attorneys, Bureau of Internal Revenue, and the plaintiffs-complainants William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, appeared by William D. Noland, memoranda of Points and Authorities in support of the positions of the respective parties had theretofore been filed and the Court at said time heard the argument of counsel, and the Court having considered the said memoranda, arguments of counsel, together with the files, pleadings, exhibits and other memoranda in the above entitled cases as well as those of the related case numbered 5716-W therefrom concluded and decided that the Motion of said defendants should be granted.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the defendants, **George D. Martin**, Internal Revenue Agent in Charge, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los



Angeles Division; Norman Hayward, Internal Revenue Agent; Raymond B. Sullivan, Acting Internal Revenue Agent; and John H. Cramer, Internal Revenue Agent, be and they hereby are given Summary Judgment against the plaintiffs-complainants, William D. Noland as Trustee of the Dr. William D. Noland Trust Estate, Ltd., and William D. Noland, personal, for dismissal of the above entitled action and the costs of said defendants to be taxed by the Clerk of this Court in the sum of \$.....

Dated: April 21st, 1948.

/s/ CHARLES C. CAVANAH,  
District Judge.

Judgment entered April 21, 1948. Docketed April 21, 1948. Book C.O.50, Page 257. Edmund L. Smith, Clerk.

(Affidavit of Service by Mail Attached.)

[Endoresd]: Filed April 21, 1948. [89]

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[Title of District Court and Cause]

### MOTION TO AMEND COMPLAINT

Comes now William D. Noland, Trustee, and William D. Noland, personal, complainants for his personal interest as a trustee, and personal individual interest, as both interests are involved, and Moves the Court, to amend the complaint in the



above entitled action in above entitled court, upon grounds as follows:

The matter cannot be prosecuted to the fullest extent of the law on account of mistakes and errors which have been made by complainants as a layman and complainants are not lawyers or attorneys, therefore, the complaint needs corrections of said mistakes to be brought to a conclusion in the procedure of same.

Wherefore, complainants pray that complainants be allowed and beg leave of the court to amend the complaint in above action.

Dated: March 3, 1948, Los Angeles, Calif.

/s/ WILLIAM D. NOLAND,  
Trustee.

/s/ WILLIAM D. NOLAND,  
Personal.

[Endorsed]: Filed March 3, 1948. [91]

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At a stated term, to-wit: The February Term. A. D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 30th day of March in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable Charles C. Cavanah,  
District Judge.

[Title of Cause.]

For hearing (1) motion by defendant, Harry C. Westover, for Summary Judgment, filed Dec. 1, 1947; (2) objections of plaintiffs to said motion of defendant, filed Dec. 5, 1947; (3) motion of defendants other than Harry C. Westover, for summary judgment, filed Dec. 1, 1947; (4) objections of plaintiffs to said motion of defendants, filed Dec. 5, 1947; and (5) motion of plaintiffs to amend complaint, filed March 3, 1948; Wm. D. Noland, present in propria persona and as trustee; Geo. M. Bryant, Esq., Ass't U. S. Att'y, and Loran P. Oakes, Special Att'y, Bureau of Internal Revenue, appearing as counsel for defendants; and both sides answering ready, Court orders that counsel proceed.

Attorney Oakes makes a statement to the Court and refers to action previously heard by Judge Weinberger in this court, being No. 5716-W Civil and contends that the ruling of the Court in that case is *res adjudicata* as to the defendant revenue agents in this case, and *stare decises* as to the defendant Collector; and argues in support of the motion for summary judgment as to Def't Westover and argues in support of motion for Summary Judgment on behalf of defendants other than Def't Westover, and states the grounds of the respective motions, and also state objections to the plaintiff, Wm. D. Noland, appearing for plaintiffs other than himself as he is not an attorney at law. Attorney Oakes makes a further statement of objections to the complaint, and argues further in support of

defendants' said motions; and states defendants' objections to the [92] amendment of the complaint and asks if the motion to amend the complaint is granted, that the motions of defendants for summary judgment stand as to the complaint as amended.

At 10:51 A. M. Plaintiff Noland makes a statement of the objections to the said motions of defendants for summary judgment, and states that he appears only for himself and as trustee; and argues further to the Court in opposition to the said motions of defendants and argues further in support of the motion to amend complaint. The Court makes a statement.

At 11:43 A. M. Attorney Oakes argues further to the Court on behalf of defendants.

The Court makes a statement and there appearing to be no objections at this time to the plaintiff's proposed amendments to complaint, therefore, the amendments are allowed in the manner pursuant to the proposals of the plaintiff served and filed March 19, 1948.

The Court further orders that the said motions for summary judgment as filed shall apply to the complaint as amended by the said proposals of plaintiff.

At 11:52 A. M. court recesses to 2 P. M. today. At 2:03 P. M. court reconvenes herein and Plaintiff Noland being present, defendants' counsel being absent, the Court orders that the case proceed.

Plaintiff Noland makes a further statement to the Court and refers to Ex. "C" and the letter therein, dated 12/14/1944, filed 10/10/47 in support of amended complaint. At 2:05 P.M. Attorney Oakes is now present as counsel for defendants. Plaintiff Noland continues and reads said letter dated 12/14/44 to the Court; and refers to Ex. "F" filed 10/10/47, and the letter therein dated 12/29/45 and reads said letter to the Court; and refers to Ex. "E" and letter therein dated 1/26/45 and reads said letter to the Court.

At 2:15 P. M. Attorney Oakes makes a further statement to the Court on behalf of the defendants and refers to the Judgment in Case No. 5716-W Civil in this Court and reads a portion thereof to the Court and argues further in support of motions of defendants for summary judgment herein.

The Court makes a statement and orders said motions for Summary Judgment by defendants stand submitted pending further order of the Court. [93]

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District Court of the United States, Southern  
District of California, Central Division

### DOCKET ENTRIES

3/19/48—Fld plfs proposals to amend bill of complt.

3/29/48—Fld Order Transf. case to calendar of Judge Cavanah for hrg. of Motions for Summary Judgment, and Motion of plfs. to amend Complaint only; same now being set for hrg. 3/30/48 10 AM Before Judge Cavanah.



- 3/29/48—Ent ord transferring case to Judge Cavanah for hearing on March 30th, 1948 on motion for summary judgment and to amend complaint, etc.
- 3/30/48—Ent proc. hrg. and ent ord permitting plfs. to proposals filed by plf. 3/19/48; and ent ord that Motions of defts. for Summary Judgment shall apply to the compl. as amended by said proposals of plf. Ent proc hrg. Motions of defts. for Summary Judgm. and ord stand submitted pending further ord. of court. (Judge Cavanah).
- 4/19/48—Ent proc. oral decision and ent ord sustain. Motions of defts. for Summary Judgm. Counsel for defts. to prepare and present to the court form of Decree by 4/22/48 (Judge Cavanah).
- 4/19/48—Fld second amended complt. Fld memo pts auths suppt second amd complt. Fld seven affids in suppt of amended complt.
- 4/20/48—Lodged deft's prop sum judgt in favor deft Harry C. Westover; Lodged deft's prop sum judgt in favor cert defts.
- 4/21/48—Ent ord & Fld & Ent CO BK 50/255 Summary Judgment in favor of deft. Harry C. Westover—Dock same. Ent ord & Fld & Ent CO BK 50/257 Summary Judgment in favor defts. George D. Martin, et al Dock same—Mld notice to plf.



Noland and to deft's counsel. MD Report  
JS-6.

5/ 4/48—Fld plfs notice of appeal, mld copy to  
George M. Bryant, 600 Federal Bldg. Los  
Angeles, 12, atty for defts. Fld plfs cost  
bond on appeal. [94]

United States of America,  
Southern District of California—ss.

I, Edmund L. Smith, Clerk of the United States  
District Court for the Southern District of Cali-  
fornia, do hereby certify that the foregoing is a full,  
true, and correct copy of the docket entries in the  
matter of William D. Noland, et al., vs. Harry C.  
Westover, et al., No. 7315-O'C, docket entries dtd  
3/19/48 to 5/4/48, incl., as the same appears from  
the original record remaining in my office.

Witness my hand and seal of said Court, this 7th  
day of May, A.D. 1948.

(Seal) EDMUND L. SMITH,  
Clerk.

By /s/ EDWARD L. DREW,  
Deputy Clerk.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Counsel for Defendants and the Defendants  
in the Above Entitled Action:

Please Take Notice, that the complainants, Wil-  
liam D. Noland, Trustee, and William D. Noland,

Personal, in the above action, is appealing from the **Summary Judgments** made and entered on or about April 21, 1948, in above entitled court and case, to the United States Circuit Court of Appeals for the **Ninth Circuit**, at Los Angeles, California.

Dated Los Angeles, California, April 26, 1948.

/s/ WILLIAM D. NOLAND,  
Trustee, In Propria Persona.

/s/ WILLIAM D. NOLAND,  
Personal, In Propria Persona.

[Endorsed]: Filed May 4, 1948. [96]

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men By These Presents:

That we, William D. Noland, Trustee, Dr. William D. Noland Trust Estate, Ltd., a Benevolent Trust Estate, and William D. Noland, Personal, complainants in the above entitled court and action, as principals, and H. F. Dexter, Harry R. Maxwell, as Sureties, are held and firmly bound unto the above named defendants, Harry C. Westover, George D. Martin, Norman Hayward, Raymond S. Sullivan and John H. Cramer, in the full sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, to be paid to the said defendants, or their counsel, executors, administrators, or assigns; to which payment well and [97] truly to be made, we bind our-

selves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of April, in the year of our Lord One Thousand Nine Hundred and Forty-Eight (A.D. 1948).

Whereas, lately, on or about April 21, 1948, at the District Court of the United States for the Southern District of California, Central Division, in a suit depending in said Court, between the aforesaid complainants and defendants, and whereas Summary Judgments was rendered against the said complainants, William D. Noland, Trustee, and William D. Noland, Personal, and the said complainants have taken an appeal from said summary judgments to the United States Circuit Court of Appeals, for the Ninth Circuit, at Los Angeles, California, to reverse the said summary judgments in the aforesaid suit, and a notice of said appeal to said Court of Appeals directed to the aforesaid defendants having been filed and served, advising said defendants of said appeal to the said Court of Appeals, to be held in Los Angeles, at the term of said Court or as soon thereafter as the Court may attend to this matter and counsel may be heard on said appeal.

Now, the conditions of the above obligation is such, that if the aforesaid complainants, William D. Noland, Trustee, and William D. Noland, Personal, shall prosecute the said appeal to effect, and answer all damages and costs, if said complainants fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

We, the undersigned mutually affix our signatures in confirmation of the terms and conditions herein on the day and date first above written.

(Seal)        /s/ WILLIAM D. NOLAND,  
Trustee, and Principal.

(Seal)        /s/ WILLIAM D. NOLAND,  
Personal, and Principal. [98]

Address of Principals: William D. Noland, Trustee, and William D. Noland, Personal, 2030 Wilshire Blvd., Suite 201-205, Los Angeles 5, California.

/s/ H. F. DEXTER,  
Surety.

/s/ HARRY R. MAXWELL,  
Surety.

United States of America,  
Southern District of California,  
County of Los Angeles—ss.

H. F. Dexter and Harry R. Maxwell, being duly sworn, each for himself deposes and says, that he is a freeholder in said District, and is worth the sum of Two Hundred Fifty and no/100 (\$250.00) Dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

/s/ H. F. DEXTER,  
Surety.

1329 Myra Ave., Los Angeles 27.

/s/ HARRY R. MAXWELL,  
Surety,

14542 Otsego St., Sherman Oak, Cal.

Subscribed and sworn to before me this 3rd day of May, 1948.

(Seal)        /s/ BEULAH E. DONATH,

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires Nov. 16, 1950.

[Endorsed]: Filed May 4, 1948. [99]

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[Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF RECORD  
ON APPEAL

To the Clerk of Said Court:

Sir:

Please issue the following documents in above entitled court and case under and pursuant to the Rule of said Court, for use on appeal of the above entitled cause and action to the United States Circuit Court of Appeals for the Ninth Circuit, as follows:

1. Notice of Appeal;
2. Bond for Costs upon Appeal;
3. Assignment of Errors;
4. Second Amended Bill of Complaint;
5. Affidavit of Complainants, William D. Noland, Trustee, and William D. Noland, Personal, with Exhibit A attached; in support of complaint;
6. Affidavit of William D. Noland, Trustee, and William D. Noland, Personal, complainants, with Exhibit E attached, in support of complaint;
7. Notice of Motion for Summary Judgments, by



Counsel for [100] defendant Harry C. Westover, and other defendants;

8. Affidavit in support of motion for summary judgment, by defendant Harry C. Westover;

9. Motion for summary judgment by Harry C. Westover, defendant;

10. Affidavits of George D. Martin, defendant, Raymond B. Sullivan, defendant, John H. Cramer, defendant, and Norman Hayward, defendant, in support of motion for summary judgment for said defendants;

11. Motion for summary judgment by defendants other than Harry C. Westover, defendant;

12. Objection by complainants to motion for summary judgment by defendant Harry C. Westover;

13. Objection by complainants to motion for summary judgment by defendants George D. Martin, Norman Hayward, Raymond B. Sullivan, and John H. Cramer.

14. Summary judgment entered April 21, 1948, in favor of George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, defendants;

15. Summary judgment entered April 21, 1948, in favor of Harry C. Westover, defendant;

16. Motion to amend bill of complaint by complainants, filed March 3, 1948;

17. Bill of complaint in case No. 5716-W, U. S. District Court, Southern District of California, Central Division;

18. Judgment made and entered by Judge Weinberger in case No. 5716-W, U. S. District Court, Southern District of California, Central Division;

19. Statement of Points upon Appeal relied upon by Appellants;

20. Minutes of the court for hearing on March 30, 1948, before the Honorable Charles C. Cavanah;

21. Docket of the Court from 3/19/48 to 5/4/48 inclusive;

22. Designation of documents and proceedings upon which appellants rely upon appeal; [101]

23. Court Reporter's Transcript of the proceedings held in above entitled court before the Honorable Charles C. Cavanah, Judge presiding on March 30, 1948;

24. Names and address of attorneys.

Together with any proper additional portions of the record in above entitled case to be designated by such designation as appellees may file herein, pursuant to and under the rules of the above entitled court. The transcript will be put in printed form for final distribution.

Dated Los Angeles, California, May 12, 1943.

/s/ WILLIAM D. NOLAND,  
Trustee, In Propria Persona,  
Complainant-Appellant.

/s/ WILLIAM D. NOLAND,  
Personal, In Propria Persona,  
Complainant-Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed May 16, 1946. [102]

[Title of District Court and Cause.]

BILL OF COMPLAINT AND APPLICATION  
FOR TEMPORARY RESTRAINING OR-  
DER: TEMPORARY INJUNCTION AND  
PERMANENT INJUNCTION

Comes now William D. Noland, H. K. Miller and Harry R. Maxwell, Trustees for Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, organized and established by contract under the provisions of the Constitution of the United States of America, the said Trustees acting under citizenship, common law rights of contract, under which said contract the said benevolent trust estate is established, and the said Trustees and William D. Noland complain in this bill of complaint in equity as the complainants against the defendants and each of them for a cause of action, as follows, to-wit:

1.

The contract under which the aforesaid benevolent trust [105] estate is organized was written by the late Franklin P. Bull, commonly known as Judge Bull, who prior to his passing in death, had practiced law in the State of California for over fifty (50) years, and Trustees for said trust estate have an office at 3944 Wilshire Boulevard, Los Angeles 5, California.

2.

The defendants, George D. Martin, Internal Revenue Agent in charge, United States Treasury De-

partment, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division; Norman Hayward and John H. Cramer, Internal Revenue Agents; Joseph D. Nunan, Jr., Commissioner, Internal Revenue Service; Raymond D. Sullivan, Acting Internal Revenue Agent; all located at 417 South Hill Street, Los Angeles, California; and fictitious named defendants, individuals and others 1 to 10, the correct names and addresses of whom are unknown at this time to complainants, and, when correctly known, complainants will respectfully beg leave of the Court to amend this bill of complaint in equity and substitute the correct name and addresses of said fictitious named defendants.

### 3.

For the jurisdiction of this action in the above entitled Court, federal statutes and federal questions under the jurisdiction of the above Court are involved, and the damages, losses and injuries caused by fraud to complainants, are in excess of Three Thousand (\$3,000.00) Dollars over and above all costs and attorney fees in the prosecution of this action in the above entitled Court.

### 4.

That on or about July 6, 1942, Norman Hayward, Internal Revenue Agent, and collector for United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, [106] Los Angeles Division, had made several calls



prior to said date and after said date of July 6, 1942, at the office of complainants, at aforesaid address, and the said Norman Hayward defendant herein, upon his first call at the said office of complainants on or about June 6th, 1942, demanded that he be allowed to have the Trustees' books and records of the aforesaid Dr. William D. Noland Trust Estate, Ltd., for the purpose to go over the said books and make a report from said books to the Internal Revenue Service, Treasury Department of the United States, threatening that if he was not allowed to go over said books that he would have warrants issued against William D. Noland, Trustee of the Board of Trustees for said Dr. William D. Noland Trust Estate, Ltd., and the said books and records of the aforesaid trustees and complainants were produced, to the said Norman Hayward, Internal Revenue Agent, and he proceeded to read and check in all detail the said trustees' books and records, and in said reading and checking he spent several days at the aforesaid office of the said trustees and complainants hereof.

5.

That during the several days spent in going over the aforesaid trustees books and records by the aforesaid Norman Hayward, Internal Revenue Agent and Collector, the said Norman Hayward in making up a schedule of taxation to correspond with his views of a schedule for additional taxation for the years of 1937, 1938, 1939, 1940 and 1941, he wilfully and maliciously, with malice aforethought,



through and by fraud, fraudulently confiscated assets and property of the aforesaid benevolent trust estate, Dr. William D. Noland Trust Estate, Ltd., from the said trustees' books and records, and fraudulently assigned, transferred and delivered said assets and property in a schedule to the personal account of William D. Noland, and in this manner of fraud, the said Norman Hayward fraudulently made a personal additional taxation of Four [107] Hundred One and three one-hundredths Dollars (\$401.03) for the said years of 1937, 1938, 1939, 1940 and 1941, after the said trustees had made the tax return reports for said benevolent trust estate of Dr. William D. Noland Trust Estate, Ltd., for the said years of 1937, 1938, 1939, 1940 and 1941. (Copy of said trust estate contract filed herewith under affidavit marked Exhibit "A".)

## 6.

The said Norman Hayward, Internal Revenue Agent and Collector, after going over the said trustees' records and books, and after making the fraudulent confiscations, assignments, transfers and deliveries, of the assets, funds and property of aforesaid benevolent trust estate to the personal account of William D. Noland, complainant herein, he then further demanded with a further threat of issuing warrants, the payment of aforesaid fraudulent additional taxation as he had calculated same as aforesaid, and finally the said Norman Hayward accepted the sum of \$80.45 in payment of the said additional taxation of the personal account of afore-

said William D. Noland, for the year of 1937, and the said additional taxation for the said year of 1937 was thus fraudulently established against the said William D. Noland, by the said Norman Hayward, Internal Revenue Agent and defendant herein, in conflict with \$63.85 said Hayward formerly created as 1937 tax, by his manner of fraud, in the fraudulent assignments, transfers and deliveries as made by him from the trustees' books and records of the assets, funds and property of aforesaid Dr. William D. Noland Trust Estate, Ltd., to the personal account of aforesaid William D. Noland, for the purpose of collecting an additional taxation, in addition to the reports and returns for income tax as made by the said complainant trustees of the Board of Trustees for Dr. William D. Noland Trust Estate, Ltd., and for which the said Norman Hayward gave a receipt to the said William D. Noland in the said sum of \$80.45. (Copies of aforesaid fraud and fraudulent assignments, transfers and [108] deliveries as made by said Norman Hayward, defendant, and receipt for money paid him, are under affidavit filed herein marked Exhibit "C".)

## 7.

That the aforesaid George D. Martin, Internal Revenue Agent in Charge, and John H. Cramer, Internal Revenue Agent, under date of January 26, 1945, in a letter addressed to Dr. William D. Noland Trust Estate, Ltd., William D. Noland, Trustee, with statements attached to said letter showing

that assets of said trust estate were fraudulently confiscated and assigned, transferred and delivered by said Internal Revenue Agents from the aforesaid benevolent trust estate to the account of William D. Noland personally with a provision in said statement that said William D. Noland pay an additional income taxation for the year of 1943, in the sum of \$1,061.77, plus a penalty of \$53.09, making a total additional tax and penalty in the sum of \$1,114.86, and said statements attached to said letter set forth that said additional tax and penalty must be paid to the said Internal Revenue Agent in Charge. (Copy of said letter and statements of five pages attached to said letter under affidavit filed herein and for identification marked Exhibit "B".)

## 9.

That there was further attached to aforesaid letter of January 26, 1945, a statement signed by John H. Cramer, Internal Revenue Agent, showing that again the assets, funds and property of the aforesaid benevolent trust estate had been fraudulently confiscated, assigned, transferred and delivered to the account of William D. Noland personally with a provision in said statement that William D. Noland must pay an additional taxation of \$656.75 for the year of 1942, said statement is dated November 3, 1944. [109] (Attention of the Court is here called to Exhibit "C" at page 1, which shows a receipt from Norman Hayward, Internal Revenue Agent, in the sum of \$80.45 in payment of

additional tax for 1942, after said Internal Revenue Agent had, from the trustees' records, fraudulently confiscated and assigned, transferred and delivered assets, funds and property of aforesaid benevolent trust estate to the personal account of William D. Noland for additional taxation against William D. Noland, pursuant to tax returns made by the trustee complainants hereof.)

10.

The aforesaid letter of Internal Revenue Agent in Charge, dated January 26, 1945, and aforesaid statement dated November 3, 1944, attached to said letter, is accompanied with a schedule of adjustments, shows that the funds, assets and property of the aforesaid benevolent trust estate was fraudulently confiscated and assigned, transferred and delivered to the personal account of William D. Noland and made the said assignment, transfer and delivery to personal property of William D. Noland, as per schedule of page 2 of Exhibit "B" filed herewith in support of this bill of complaint in equity, and on page 3 of said Exhibit B is schedule No. 1, of adjustments to Net Income as made by the said Internal Revenue Agent, whereby again the assets, funds and property of the said benevolent trust estate was fraudulently confiscated and assigned, transferred and delivered to the personal account of William D. Noland, and likewise in schedule 1 (a) on page 4 of said Exhibit "B", aforesaid Internal Revenue Agents have made fraudulent confiscations and assignments, transfers



and deliveries of the assets, funds, and property of said benevolent trust estate to the personal account of William D. Noland, and additional taxes levied against William D. Noland on said assets, funds and property of said benevolent trust estate without the permission and consent of the trustees for said benevolent trust estate, Dr. William D. Noland Trust Estate, Ltd., and said trustees are the complainants [110] in this entitled cause and action in the above entitled Court, and said Exhibit "B" hereof is filed herewith in support of this bill of Complaint in equity.

11.

That on page 5 of aforesaid Exhibit "B" herein, schedule No. 2, shows the manner in which the fraudulent confiscations, assignments, transfers and deliveries of the assets, funds and property of aforesaid trust estate have been made the personal property of William D. Noland for the purpose of fraudulently confiscating property for additional taxation against said William D. Noland personally in the sum of \$1,114.86 for the year of 1943.

12.

Complainants further allege, that upon receipt of letter dated January 26, 1945, from aforesaid George D. Martin, Internal Revenue Agent in Charge, which said letter was addressed to Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, William D. Noland, Trustee, 3944 Wilshire Blvd., Los Angeles, California (See Exhibit



“B”, filed herein), and was a notification to aforesaid trustees for said benevolent trust estate, that the said George D. Martin had through his office made an adjustment for the year of 1943, in an additional tax of \$1,061.77, plus a penalty of \$53.09, making a total additional tax and penalty of \$1,114.86, and in a statement attached to said letter, dated November 3, 1944, and signed by John H. Cramer, Internal Revenue Agent, cites where he assigned, transferred and delivered assets under the title of adjustments from the said benevolent trust estate and credited them to the personal account of William D. Noland personally, and then taxed said assets as the personal account of said William D. Noland, for the years of 1942 in the sum of \$656.75, and 1943 in the sum of \$1,114.86, as additional taxes. [111] And upon receipt of said notification, complainants filed a protest with said Internal Revenue Agent in Charge, to said assignments, transfers and deliveries by the aforesaid Internal Revenue Agents, from the Dr. William D. Noland Trust Estate, Ltd., to the personal account of William D. Noland for additional taxes, and after numerous hearings before the said Internal Revenue Service and Department, on December 29, 1945, a letter, addressed to William D. Noland, was received from the said Internal Revenue Service, of 417 South Hill St., Los Angeles 13, California, notifying of a deficiency of an additional tax liability in the sums of \$1,245.13 and a penalty of \$62.26, as shown in statement attached

to said letter, for the taxable year ended December 31, 1943, and said letter was signed by Joseph D. Nunan, Jr., Commissioner of Internal Revenue, and also by Raymond B. Sullivan, Acting Internal Revenue Agent in Charge. (See Exhibit "D" which is filed herein.)

13.

Complainants further allege that within ninety (90) days after receiving the aforesaid letter dated December 29, 1945, that complainants filed a petition for hearing on appeal for a redetermination of the aforesaid tax matter in controversy to the Tax Court of the United States, at Washington, D. C., said petition for hearing was filed with the said Tax Court of the United States, and on August 2, 1946, the said Tax Court of the United States ordered that respondent's motion to dismiss for lack of jurisdiction is granted. (See Exhibit E filed herein.)

14.

Complainants further allege that the business involved herein is conducted and operated under the aforesaid benevolent trust estate, as a benevolent institution, and as such has been in operation since June 1st, 1935, and is now operating as such [112] benevolent institution under aforesaid benevolent trust estate, which is organized by and under the terms and conditions of a contract by and between the parties hereof, organized under the Constitution of the United States, wherein said benevolent trust estate is to be administered by natural

person trustees in joint tenancy, holding in trust as to distribution of avails, acting under Citizenship, Common Law Rights of Contract, and Constitutional Rights, Federal Laws and Immunities vouchsafed to all persons, as set forth and provided in and by the Constitution of the United States of America.

## 15.

Complainants further allege that Section 167 of the Federal Internal Revenue Code, where the Trustee, Trustor and Beneficiary are the same, the income is taxable to the Trustor, as alleged by John H. Cramer, Internal Revenue Agent, in Exhibit "B", page 1, filed herein by complainants, wherein aforesaid and said Internal Revenue Agents and Representatives of the Federal Internal Revenue Service have assigned, transferred and delivered assets from the said Benevolent Trust Estate to the personal account of William D. Noland, and claiming authority to do so by said Section 167, of the Federal Internal Revenue Code, complainants contend and claim that the said Section 167, is not applicable to the aforesaid Dr. William D. Noland Trust Estate, Ltd., a Benevolent Trust Estate, organized as aforesaid as a benevolent institution under the provisions as aforesaid under the Constitution of the United States by a contract between the parties hereof, because the said Benevolent Trust Estate has a board of trustees who are the complainants herein, and also have numerous beneficiaries, therefore, the trustee, trustor and benefi-

ciary are not one and the same as claimed by the said John H. Cramer, Internal Revenue Agent, as set forth in said Exhibit "B" page 1, filed herein by complainants. [113]

## 16.

Complainants allege that the income tax returns for aforesaid benevolent trust estate for the years 1937, 1938, 1939, 1940, 1941, 1942 and 1943, have all been consecutively filed with the Internal Revenue Service of the United States for each of the said years by the complainants herein, wherein the aforesaid Internal Revenue Agents made aforesaid fraudulent confiscations, assignments, transfers and deliveries of assets from the aforesaid benevolent trust estate to the personal account of William D. Noland for the purpose of creating additional taxes without the consent and permission of the complainants hereof, and such confiscation of the assets of said benevolent trust estate was made by the aforesaid Norman Hayward, Internal Revenue Agent and Collector, by and through misrepresentation and fraud as set forth herein aforesaid; and the other aforesaid Internal Revenue Agents, after getting a false and fraudulent report from the said Norman Hayward, based upon his personal fraudulent manner in which he viewed the trustees' records and books of the aforesaid benevolent trust estate, the said other Internal Revenue Agents also made fraudulent confiscations, assignments, transfers and deliveries of assets from the complainants herein aforesaid benevolent trust estate based upon



the fraudulent scheme of the said Norman Hayward, for the purpose of creating additional taxation by fraudulent confiscation of the assets of said benevolent trust estate, the trustees of which said benevolent trust estate are the complainants in the above entitled cause and action. (Photo-copies of income tax returns made by complainants filed herein and marked Exhibit "F" for identification.)

## 17.

Complainants allege that in making the federal income tax returns for the year of 1942 that they paid the sum of Thirty-five and 64/100 Dollars (\$35.64); and for the year of 1943 that they [114] paid the sum of One Hundred Eighty Three and 36/100 Dollars (\$183.36) to the Internal Revenue Service at Los Angeles, California, and that under the date of March 8, 1944, a letter addressed to Dr. William D. Noland Trust Estate, Ltd., William D. Noland, Trustee, Re-Credit of \$8.91 paid 9-15-43, advising the aforesaid trustees of said benevolent trust estate, when filing the 1943 income tax return for above named estate, to attach carbon copy of said letter to face of Form 1041 for identification with the overpayment being held in a suspense account, which is to be credited to that form, was received. The said letter was signed Harry C. Westover, Collector, by W. R. Pearson, Cashier. Complainants contend and claim that the aforesaid paid amounts of \$35.64 for income tax for 1942, and \$183.36 for income tax for 1943, less the said amount of \$8.91 overpaid 9-15-43, which is a total of \$210.09,



which complainants contend and claim that the said \$210.09 should be refunded to the aforesaid complainants and trustees for said benevolent trust estate, as the said amount of \$210.09 was paid in error to the aforesaid Internal Revenue Service and Collector of Internal Revenue of Income Tax. (See Photo-copy of said letter of March 8, 1944, attached to income tax return of complainants for year of 1943, filed herein under Exhibit "F" so marked for identification.) Therefore, complainants demand the return of the said amount of \$210.09.

## 18.

The assets, funds and property of Dr. William D. Noland Trust Estate, Ltd., which have been assigned to William D. Noland personally by the aforesaid Internal Revenue Agents and Representatives, have been done so without the permission and consent of the Complainants in this action, and the complainants hereof contend that the aforesaid assignments, transfers and deliveries of the assets, funds and property of Dr. William D. Noland Trust Estate, Ltd., to the personal account of William D. Noland are fraudulent [115] confiscations of property belonging to aforesaid benevolent trust estate, and that the said complainants demand the return of the aforesaid \$80.45 which was paid to the aforesaid Norman Hayward by said William D. Noland for additional tax for the year 1937 on July 6, 1942, which said \$80.45 was furnished by complainants.

## 19.

Complainants further allege that complainants and William D. Noland are further threatened by the aforesaid Internal Revenue Agents and other Internal Revenue Agents to the extent that the carrying out of said threats will cause irreparable injuries, losses and damages to such an extent that it will cause a total loss of the assets, funds and property of the aforesaid benevolent trust estate for which complainants are the trustees, and that the destruction will leave nothing to recover, therefore, the only protection is a temporary restraining order, temporary injunction pending the determination of this action, followed with a permanent injunction, to protect the assets, funds and property of aforesaid benevolent trust estate.

Wherefore, Complainants demand relief and pray for process and judgment as follows:

1. That the complainants be granted and issued by the Court, a temporary restraining order, restraining the defendants and each of them, their representatives, officers, agents, servants and employees, and each of them, from unlawfully molesting, harassing, annoying, or in any manner unlawfully molesting or disturbing complainants herein, and from further unlawfully assigning, transferring and delivering the assets, funds and property of the Dr. William D. Noland Trust Estate, Ltd., to the personal account of William D. Noland or anyone else, pending the determination of this cause and action in the above entitled court. [116]

2. That the Court set a day and date for hearing the defendants and each of them, to show cause why the aforesaid temporary restraining order should not be made a temporary injunction.

3. That the Court issue a temporary injunction under the provisions of the aforesaid temporary restraining order, restraining and enjoining the aforesaid defendants and each of them as provided in said temporary restraining order aforesaid.

4. That the Court grant and issue a permanent injunction against the defendants and each of them and as provided in the aforesaid temporary restraining order and temporary injunction, permanently enjoining the said defendants and each of them and their representatives, agents and others as provided in aforesaid temporary restraining order and temporary injunction.

5. That the defendants be ordered to return to complainants the aforesaid amounts of \$80.45 and \$210.09, totally \$290.54, with interest, which was paid by complainants for William D. Noland personal additional taxes in the sum of \$80.95, wherein the assets, funds and property of complainants was fraudulently confiscated, assigned, transferred and delivered from the aforesaid benevolent trust estate to the personal account of said William D. Noland for additional unlawful taxation pursuant to the tax reports made and filed by complainants, and \$210.09 paid by complainant trustees in error.

6. That the complainants be awarded and given judgment in the sum of Fifty Thousand Dollars

(\$50,000.00) as compensated damages against the aforesaid defendants and each of them for fraudulently taking the trustees' books and records and making fraudulent confiscations, assignments, transfers [117] and deliveries from said records and books, and also likewise from income tax returns made by complainants to aforesaid Internal Revenue Service, from the aforesaid benevolent trust estate to William D. Noland personal account for additional taxes, and for causing to complainants endless mental anguish, molestation, annoyance, harassment, persecution, damages, losses and injuries since July 6, 1942, and continuously, including the present time.

7. That the aforesaid assignments, transfers and deliveries of assets, funds and property from the aforesaid benevolent trust estate to the personal account of William D. Noland for additional taxation, and aforesaid additional taxation, all be adjudicated and decreed as unlawful, null and void, and of no effect whatsoever.

8. That complainants be awarded a judgment for attorney fees if and when counsel is employed, for court costs and all other costs accruing in the prosecution of the above entitled cause and action.

Wherefore, complainants demand relief and pray for such other aid and relief, order or orders, as the Court may deem just and proper in the premises.

Exhibits "A", "B", "C", "D", "E", and "F"



filed herein in support of this bill of complaint in equity.

Dated: Los Angeles, California, August 27, 1946.

/s/ WILLIAM D. NOLAND,  
William D. Noland Trust Estate, Ltd., and  
/s/ WILLIAM D. NOLAND,  
Personal. In Propria Persona.

Memorandum of points and authorities filed herein in support of Bill of Complaint in Equity hereof.

(Duly Verified.)

[Endorsed]: Filed Aug. 28, 1946. [118]

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[Title of District Court and Cause]

ORDER AND JUDGMENT OF DISMISSAL AS  
TO DEFENDANT JOSEPH D. NUNAN, JR.

On September 25, 1946, the defendant, Joseph D. Nunan, Jr., Commissioner of Internal Revenue, by his attorneys herein mentioned, appeared specially herein for the sole and limited purpose of asserting that this Court in the above entitled action has no jurisdiction over him, and that the above action as to him is improper on grounds of venue under the applicable Federal statutes. On November 19, 1946, the said defendant, Joseph D. Nunan, Jr., filed a Motion moving the Court to dismiss the above action as to him upon the ground that the Court had no jurisdiction of the person of said defendant, on the further ground that no process had been served



upon said defendant, and upon the further ground that under the applicable provisions of the Judicial Code a civil action such as the one above entitled could be brought against said defendant only in the District of which he is an inhabitant, and that venue as to said defendant was improper since the foregoing defendant was not an inhabitant of the Southern District of California or of the State of California.

The matter of the above Motion by said defendant having regularly come on for hearing on December 4, 1946, before the Honorable Jacob Weinberger, Judge presiding therein, and the complainant, William D. Noland appearing in propria persona, on behalf of himself individually, and also as trustee of the above Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and the said defendant appearing by James M. Carter, E. H. Mitchell and Loran P. Oakes, counsel for such defendant, and all matters relating to the above Motion having been submitted to the Court for its decision, and the Court having considered the pleadings and other papers herein filed and heard the arguments of counsel for said defendant concerning the foregoing matter and the oral admission in open court at that time by the said William D. Noland appearing in the capacities above stated that said defendant was not an inhabitant of the Southern District of California or the State of California, and that the said defendant had accordingly been erroneously named as a defendant in the

above entitled proceeding, and the Court being fully advised in the premises and by reason of the above admission, the facts involved and by virtue of the law and other matters aforesaid, now renders its decision as follows:

It Is Hereby Ordered, Adjudged and Decreed:

1. That the above action be and the same is hereby dismissed as to the said defendant, Joseph D. Nunan, Jr., Commissioner of Internal Revenue.
2. That the Clerk of this Court shall enter this Order and Judgment of Dismissal.

Dated: This 8th day of January, 1947.

/s/ JACOB WEINBERGER,

United States District Judge.

Judgment entered Jan. 9, 1947. Docketed Jan. 9, 1947. Book 41, Page 307. Edmund L. Smith, Clerk.

[Endorsed]: Filed Jan. 9, 1947. [122]

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[Title of District Court and Cause]

ORDER AND JUDGMENT OF DISMISSAL AS  
TO DEFENDANTS GEORGE D. MARTIN,  
NORMAN HAYWARD, RAYMOND B.  
SULLIVAN, AND JOHN H. CRAMER,  
INTERNAL REVENUE AGENTS

On November 19, 1946, the said defendants, George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, Internal Revenue

Agents (hereinafter referred to as the above four defendants), filed a Motion moving the Court to dismiss the above action as to them upon grounds set forth in such Motion including the ground that the complaint herein fails to state facts sufficient to justify the issuance of an injunction or the granting of any injunctive relief whatsoever herein, and the further ground that such Complaint fails to state a claim upon which relief as prayed for in the Complaint or [123] any other relief can be granted against the above four defendants or any of them.

The matter of the foregoing Motion by the above four defendants having regularly come on for hearing on December 4, 1946, before the Honorable Jacob Weinberger, Judge presiding therein, and the Complainant William D. Noland appearing in *Propria Persona* on behalf of himself individually, and also as trustee of the above Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, and the above four defendants appearing by James M. Carter, E. H. Mitchell and Loran P. Oakes, counsel for such defendants, and all matters relating to the above Motion having been submitted to the Court for its decision, and the Court having considered the pleadings and other papers herein filed and heard the arguments of the Complainant William D. Noland appearing in the capacities above stated and of counsel for the above four defendants concerning the foregoing matter, and the Court being fully advised in the premises, and by virtue of the law, the matters aforesaid and the

grounds hereinafter mentioned, now renders its decision as follows:

It Is Hereby Ordered, Adjudged and Decreed:

1. That the application and prayer in the Complaint and proceedings herein for an injunction or any type of injunctive relief whatsoever is hereby denied on the grounds (a) that the Complaint herein filed does not state a claim upon which relief can be granted by the issuance of any type of injunction or injunctive relief, (b) that it does not appear that any irreparable injury, loss or damage will result from the failure to issue any type of injunction or injunctive relief, and (c) as to the grounds set forth in the Complaint in connection with the prayer for injunction or injunctive relief, the Complainants have plain, speedy and adequate remedies at law to such an extent **that this Court** cannot properly grant any type of injunction or injunctive relief as prayed for in the Complaint herein.

2. That the above action not only with respect to the injunctive [124] relief therein prayed, but also as to all its other aspects and in its entirety, is hereby dismissed as to the above four defendants **on the ground that the Complaint herein filed fails to state a claim upon which relief as prayed for in the Complaint or any other relief can be granted against said four defendants or any of them.**

3. That the said defendants, George D. Martin, Norman Hayward, Raymond B. Sullivan and John



H. Cramer, Internal Revenue Agents, shall have judgment for and shall recover from the said Complainant William D. Noland individually and as trustee of the said Dr. William D. Noland Trust Estate, Ltd., a benevolent trust estate, in the amount of the costs of said defendants, to be taxed by the Clerk of this Court in the sum of \$20.00.

4. That the Clerk of this Court shall enter this Order and Judgment of Dismissal.

Dated: This 9th day of January, 1947.

/s/ JACOB WEINBERGER,  
United States District Judge.

Judgment entered Jan. 9, 1947. Docketed Jan. 9, 1947. Book 41, Page 304. Edmund L. Smith, Clerk.  
[Endorsed]: Filed Jan. 9, 1947. [125]

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[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF EXTENSION  
OF TIME ON APPEAL

State of California,  
County of Los Angeles—ss.

William D. Noland, being first duly sworn, deposes and says: That he has been delayed in the preparing appeal in the above entitled matter through delay in acquiring transcript paper, re-



porter's transcript of proceedings, and also through and by illness, to such an extent, that an extension of time is necessary, as it is impossible to complete appeal without an extension of time of ninety (90) days from date of filing notice of appeal which is May 4th, 1948, that said notice was filed.

Wherefore, William D. Noland prays the court to extend the time on appeal.

/s/ WILLIAM D. NOLAND,  
Complainant.  
In Propria Persona.

Subscribed and sworn to before me this 7th day of June, 1948.

(Seal) /s/ BEULAH E. DONATH,  
Notary Public, in and for the County of Los Angeles, State of California.

My Commission Expires, Nov. 16, 1950.

[Endorsed]: Filed June 4, 1948. [126]

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[Title of District Court and Cause]

ORDER EXTENDING TIME ON APPEAL

The Court, having read the affidavit by William D. Noland, complainant in the above action, and good cause appearing therefor, for an extension of time in preparing appeal in above entitled action:

It Is Ordered, that the time to prepare and com-

plete the appeal in above entitled case and file same is hereby extended to August 2, 1948.

/s/ J. F. T. O'CONNOR,

Judge of the above entitled  
District Court.

[Endorsed: Filed June 7, 1948. [127-8]

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[Title of District Court and Cause]

STATEMENT OF POINTS UPON WHICH  
APPELLANTS RELY UPON ON APPEAL

Claims of Appellants, William D. Noland, Trustee, and William D. Noland, Personal, in submitting statement of points, are as follows:

Point 1.

That Dr. William D. Noland Estate, Ltd., is a benevolent trust estate, and a charitable organization, organized by a contract by and between the trustees, and is established by said contract to be administered by natural person trustees in a joint tenancy, holding in trust as to distribution of avails, acting under citizenship, common law rights of contract, and constitutional rights, federal laws and immunities vouchsafed to all persons, as set forth and provided in the constitution of the United States of America, and so organized on June 1, 1935, with a board of trustees and numerous beneficiaries who are poor people and poor children who are unable to pay for services. [129] And the District Court of the United States in and for Southern District of California, Central Division, in making and entering summary judgments

against the second amended bill of complaint is a denial of due process of law.

Point 2.

The aforesaid District Court of the United States in and for Southern District of California, granted motions for summary judgments and dismissed the second amended bill of complaint, and the record shows that the aforesaid Internal Revenue Collectors and Agents, cited section 167, Title 26, of the Federal Internal Code in support of assigning, transferring and delivering assets, funds and property from the aforesaid benevolent trust estate to the account of William D. Noland personally, and said section 167 of the Federal Internal Revenue Code, provides, that where the trustee, trustor, and beneficiary are one and the same, the income tax is charged to the trustor, and in the aforesaid benevolent trust estate there are a board of trustees and numerous beneficiaries, the said granting of motions for summary judgments and dismissing of the second amended bill of complaint by the said District Court was a denial of due process of law.

Point 3.

Aforesaid section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate and it does not apply to William D. Noland personally, therefore, the aforesaid Internal Revenue Collectors and Agents violated section 23, Subdivision (o) which provides for charitable and other contributions, and paragraph (2) provides, a corporation, trust, or community

chest, fund, or foundation, created or organized in the United States or in any possession thereof or under the laws of the United States or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to [130] children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. The said provision of Title 26, section 23, (o) (2) is the law that governs the aforesaid benevolent trust estate and not the aforesaid section 167, Title 26, of the Federal Internal Revenue Code as cited by said Internal Revenue Collectors and Agents, in suport of their unlawful activities as set forth in the record on appeal, and the United States District Court, Southern District of California, Central Division, in making and entering summary judgments and dismissing second amended bill of complaint was a denial of due process of law.

Wherefore, appellants, respectfully submit concise statement of points herewith on which they rely upon on appeal.

Dated. Los Angeles, Calif. June 28, 1948.

Respectfully Submitted,

/s/ WILLIAM D. NOLAND,

Trustee, In Propia Persona.

/s/ WILLIAM D. NOLAND,

Personal, In Propia Persona.

[Endorsed]: Filed July 1, 1948. [131]

[Title of District Court and Cause]

**DEFENDANTS' AMENDED DESIGNATION  
OF ADDITIONAL PORTIONS OF RECORD  
NECESSARY FOR CONSIDERATION OF  
THE COURT ON APPEAL**

Come now the defendants herein, by and through their undersigned attorneys and hereby designate the following additional portions of the record as portions necessary for consideration on appeal:

1. Defendants' motion to dismiss together with affidavits filed September 6, 1947;

2. Plaintiff's objections to motion to dismiss filed September 10, 1947;

3. This designation of additional portions of record necessary for consideration of the court on appeal.

Dated: July 8, 1948.

JAMES M. CARTER,  
United States Attorney.

E. H. MITCHELL and  
GEORGE M. BRYANT,  
Assistant U. S. Attorneys.

EUGENE HARPOLE,  
Special Attorney, Bureau of  
Internal Revenue.

By /s/ E. H. MITCHELL,  
Attorneys for Defendants.



It Is Hereby Stipulated by the complainants undersigned that the foregoing amended designation may be filed by the defendants.

Dated: This 9th day of July, 1948.

/s/ WILLIAM D. NOLAND,  
Trustee, In Propia Persona.

/s/ WILLIAM D. NOLAND,  
Personal, In Propia Persona.  
Complainants.

[Endorsed]: Filed July 9, 1948. [133]

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[Title of District Court and Cause]

#### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 133, inclusive, contain full, true and correct copies of Motion to Dismiss; Affidavit in Support of Motion to Dismiss; Objection to Motion to Dismiss; Second Amended Bill of Complaint; Affidavit in Support of Second Amended Complaint Exhibit A. Attached; Affidavit in Support of Second Amended Complaint Exhibit E Attached; Notice of Motion; Motion by Defendant Harry C. Westover for Summary Judgment; Affidavit in Support of Motion by Defendant Harry C. Westover for Summary Judgment; Motion by Defendants Other Than Harry C. West-

over for Summary Judgment; Affidavits of George D. Martin, Raymond B. Sullivan, John H. Cramer, Norman Hayward in Support of Motion for Summary Judgment; Objection to Motion by Defendants Other Than Harry C. Westover for Summary Judgment; Objection to Motion by Defendant Harry C. Westover for Summary Judgment; Summary Judgment in Favor of Defendant Harry C. Westover; Summary Judgment in Favor of Defendants George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer; Motion to Amend Complaint; Minute Order Entered March 30, 1948; Docket Entries 3-19-48 to 5-4-48; Notice of Appeal; Cost Bond on Appeal; Designation of Record on Appeal; Bill of Complaint and Application for Temporary Restraining Order; Temporary Injunction and Permanent Injunction in Case No. 5716-W; Separate Orders and Judgments of Dismissal as to Defendant Joseph D. Nunan, Jr. and George D. Martin et al in Case No. 5716-W; Affidavit and Order Extending Time to Docket Appeal; Statement of Points Upon Which Appellants Rely on Appeal and Defendants' Amended Designation of Additional Portions of Record on Appeal which, together with copy of reporter's transcript of proceedings on March 30, 1948 and April 19, 1948, transmitted herewith, constitute the record on appeal to the United States Circuit of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing

record amount to \$16.35 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 15th day of July, A. D. 1948.

(Seal)

EDMUND L. SMITH,

Clerk.

By /s/ Theodore Hocke,

Chief Deputy.

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In the District Court of the United States in and for the Southern District of California, Central Division

Honorable Charles C. Cavanah, Judge presiding.

No. 7315-O'C—Civil

WILLIAM D. NOLAND, H. K. MILLER and  
HARRY R. MAXWELL, Trustees, Dr. WIL-  
LIAM D. NOLAND TRUST ESTATE, LTD.,  
a Benevolent Trust Estate, and WILLIAM D.  
NOLAND,

Plaintiffs,

vs.

HARRY C. WESTOVER, Collector, United States  
Treasury Department, etc.; GEORGE D. MAR-  
TIN, etc.; NORMAN HAYWARD, etc.; RAY-  
MOND B. SULLIVAN, etc.; and JOHN H.  
CRAMER, etc.;

Defendants.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California  
Tuesday, March 30, 1948

Appearances: For the Plaintiffs: William D. Noland, in pro. per. For the Defendants: George M. Bryant, Assistant U. S. Attorney; Loren P. Oakes, Special Attorney, Bureau of Internal Revenue. [1\*]

The Court: You may proceed.

The Clerk: Case No. 7315, William D. Noland and others versus Harry C. Westover and others.

Mr. Noland: I am ready.

Mr. Oakes: The defendant is ready.

The Court: Tell me something about this case.

Mr. Oakes: In this case the complainants originally sued Harry C. Westover, the Collector of Internal Revenue and of course I represent the Collector as Attorney for the Bureau of Internal Revenue.

After the original complaint was filed, the complainant amended the complaint so that in addition to suing the collector they named four additional defendants.

Now, all of the additional defendants are Internal Revenue Agents, so now we have a suit against five defendants, whereas, originally, the suit was against the Collector of Internal Revenue only—the Government.

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The Court: In other words, they amended the amended complaint and brought in four more defendants?

Mr. Oakes: That is it exactly.

The Court: Did they serve them?

Mr. Oakes: All served, yes.

The Court: Very well. [2]

Mr. Oakes: So the issues are a little different with respect to the Collector of Internal Revenue and the Internal Revenue Agents.

Consequently the Government filed one motion for summary judgment on behalf of the Collector and filed a separate motion for summary judgment on behalf of the four additional defendants, the four additional defendants being Internal Revenue Agents.

So, the first motion I will present to your Honor will be the one on behalf of the Collector of Internal Revenue.

We began that motion by stating the grounds in support of the motion for summary judgment on behalf of the Collector, and the first ground was that the defendant Collector was entitled to summary judgment on the ground of stare decisis. I use that term because the same complainants sued the same Internal Revenue Agents in a prior proceeding in this court which was heard by Judge Weinberger.

Judge Weinberger granted the Government's motion to dismiss in the prior suit.

The Court: Is this the same alleged cause of action or a different cause of action?



Mr. Oakes: The cause of action against the four Internal Revenue Agents was a requested injunction. That was denied. There has been no subsequent attempt to get an injunction—to get injunctive relief so that is out of the [3] picture at this time. However, in the current suit there is an attempt to obtain declaratory relief as to what the tax liabilities might be, and there is an attempt to allege fraud against these Internal Revenue Agents.

The Court: Was that presented to Judge Weinberger in the other suit?

Mr. Oakes: Absolutely.

The Court: The same cause of action?

Mr. Oakes: That is the Government's position.

The Court: Do the pleadings show that?

Mr. Oakes: Yes. An examination of the complaint before Judge Weinberger will show that the complainants charged that the Internal Revenue Agents acted fraudulently and that was an issue before Judge Weinberger. He decided that in favor of the Internal Revenue Agents.

And also in the prior litigation there was an attempt to obtain declaratory relief and have the court adjudicate the tax liabilities involved. And that was also held in favor of the Internal Revenue Agents in the prior proceedings. The prior proceedings are No. 5716-W.

So, in presenting this motion on behalf of the Internal Revenue Agents, we have argued that the prior proceeding before Judge Weinberger, was res adjudicata.

Now, we cannot claim that it is *res adjudicata* against the defendant Collector because the Collector was [4] not a party to the prior proceedings, so in the alternative we merely state that it is *stare decisis* as to the Collector because the Internal Revenue Agents, in the former proceedings, were alleged to have acted fraudulently and refunds were sought in the prior proceeding—declaratory relief was sought in the prior proceeding.

All those matters were adjudicated in favor of the Agents by Juge Weinberger, so we say that it is *res adjudicata* in this proceeding as to the Agents. And as to the Collector, we feel that on the ground of *stare decisis* the Collector should likewise not be liable because the Collector of Internal Revenue does not have control over Internal Revenue Agents.

I have submitted rather comprehensive memorandums of authorities in these cases and I pointed out that under Chapter 42 of the Internal Revenue Code, at Section 3990 of the Code, Deputy Collectors are under the supervision and control of the Collector of Internal Revenue Agents, but under Chapter 43 of the Code there is a separate section as to Internal Revenue Agents.

The Internal Revenue Agents are under the control of the Revenue Agent in charge. Consequently the Collector of Internal Revenue would have no control over what Internal Revenue Agents did.

It is just a matter of the statute. The Collector [5] has control of his deputies but he cannot boss

around the Internal Revenue Agents who have a different superior officer, namely, the Revenue Agent in charge.

Now, an important fact in connection with this is that the Collector, namely, Mr. Westover, took over his duties as Collector in this district on July 1, 1943, and the acts in question of which the complainants have made complaint, took place prior to July 1, 1943. So, Collector Westover wasn't even in the Government service during these earlier years and he obviously could not have been controlling the Internal Revenue Agents whose acts are complained of, not only in the pleadings before your Honor in this case, but also in the pleadings in the case before Judge Weinberger in which the agents were sued.

In fact the agents in that case were sued for fifty thousand dollars damages for their allegedly fraudulent acts and Judge Weinberger decided that in favor of the Internal Revenue Agents by dismissing the action against them.

Now, while I am still handling this motion on behalf of the Collector, I want to point out that the relief which is now sought is to obtain refunds.

Now, of course when any taxpayer wants to obtain refunds he is privileged to sue the Collector who collected the taxes in question. But in this case Collector Westover [6] didn't start on his duties as Collector until July 1943, and it is shown by the pleadings that all of the collections here were made prior to July 1, 1943. So, we think

that point is the most obvious point that we would care to present to your Honor.

I have cited numerous cases in the memorandum of points and authorities. The leading case is by the United States Supreme Court. It is *Smietanka vs. Indiana Steel Company*, 257 U. S., page 1.

That case simply holds that suit cannot be brought against one Collector for taxes which were collected by his predecessor in office. So, I don't think there can be any question whatsoever about that principle.

In this case the Collector, Collector Westover, is sued with respect to collections which were made by a prior collector, a man by the name of Rogan, who is not even a party to the suit.

That is the principal ground on which we ask for summary judgment on behalf of Collector Westover, namely, that he took office subsequent to these collections and is not the party who collected them, and hence, the suit is improperly brought against him.

And the other grounds supporting this motion by Collector Westover is as I mentioned before, he didn't have control over these Internal Revenue Agents and they made [7] their collections prior to the time at which he took office.

In the motion of Collector Westover I have specified that many of the arguments which we will present on behalf of the Agents also apply to support the summary judgment in favor of the Collector.



That, briefly, is all I set forth in my motion for summary judgment on behalf of Collector Westover and the other motion has more grounds. In fact, it goes into more detail and raises points which are in favor of summary judgment, in favor of the Internal Revenue Agents themselves through a separate motion filed on behalf of the Internal Revenue Agents.

That is all I care to mention at this time.

The Court: What is in your second motion?

Mr. Oakes: Well, if it is agreeable to your Honor, I will now proceed to my second motion.

The Court: Yes.

Mr. Oakes: Now, the second motion is on behalf of the four Internal Revenue Agents who were brought into these proceedings.

Now, the first grounds supporting the motion for summary judgment on behalf of the agents, is the ground I have already intimated to your Honor, and that is that we feel the prior proceeding before Judge Weinberger disposed of every issue that is now presented and, hence, the first [8] ground is *res adjudicata*, and I have cited authorities in support of that.

The motion to dismiss in the proceeding before Judge Weinberger, took the place of what would previously have been known as a general demurrer. In other words, we attack the sufficiency of the complaint and were upheld in that motion.

Now, I have also cited authorities that any adjudication on a motion such as that is an adjudica-



tion on the merits and therefore is entitled to be treated as *res adjudicata* when the case was disposed of in that fashion.

The second ground in support of the motion by the agents, is that there have been only two refund claims filed, according to the exhibits attached to the amended complaint.

These refund claims do not involve very large amounts. One of them sets forth an item of \$80.45. That relates to taxes for the year 1937.

The only other claim covers an item of \$35.64 for the year 1942.

Now, as to these agents the same principle applies that I mentioned in connection with the Collector of Internal Revenue.

Collector Westover didn't make any collections, [9] therefore he can't be sued for what he did not collect. Likewise, as to these four Internal Revenue Agents. Their duties were to investigate and so none of them collected any of these funds. As to one of the four agents, a man by the name of Hayward, he did receive some cash from Dr. Noland, and as a matter of convenience and on behalf of Dr. Noland for the Trust, he turned that in to the Collector—Collector Rogan, who had the job of collector prior to the time that Collector Westover took office.

We think it is very immaterial as to the fact that Agent Hayward had this money in connection with transmitting it to Collector Rogan, because that particular payment was made more than three years prior to the time that the refund claim was filed.

That is a further point that we need to present. That is, that the \$80.45 is outlawed by the statute of limitations and it would be wholly immaterial as to who collected that amount because no refund claim to that amount was filed within the three years allowed by the statute.

So, the essence of that point is that the agents did not collect and the only person who could be sued for amounts collected would be Collector Rogan, who is not a party to this suit. The only Collector who is in this litigation is Collector Westover, and he took over his [10] duties after the amounts were paid by Dr. Noland or by the Trust.

Now, we have a third ground in support of the motion by the agents. That ground is that there is a lack of indispensable parties complainant.

This suit purports to be brought on behalf of certain Trustees. The only party, as I understand it, who is before the court is Dr. Noland himself. He has brought the suit in his individual capacity and also has brought the suit as one of the three Trustees.

Now, it is also a matter of record that Dr. Noland is not an attorney at law. Of course we don't have any objection to his appearing here on behalf of himself. That is his legal privilege. But he doesn't have the right to represent any Trustees other than himself; and the other Trustees are not before the court and I believe that the latest amendment by Dr. Noland is to the effect that he does not intend to make any attempt to bring the other Trustees before this court.

Now, in the supporting memoranda on this point, of lack of indispensable parties, we have made a quotation from the document which is the so-called charitable Trust. That charitable Trust specifically provides that the Trustees must act collectively.

Now, since the word "collectively" was used, that [11] obviously connotes that the three Trustees must all join or act collectively and therefore no single Trustee, such as Dr. Noland, would have the requisite authority to come in and bring this litigation. Even if the Trust agreement had not used that term, that collective action was required, nevertheless, there are a great many authorities, and I have taken the liberty of citing a few. One very brief quotation from 65 Corpus Juris, 1032:

"Generally speaking in a suit relative to the establishment and enforcement of a trust, the trustee is a necessary party. If there are two or more trustees all must be made parties."

So, here we have a trust with three parties and it is imposible to bring in three of them because Dr. Noland is not an attorney and cannot represent the Trustees other than himself. Under the law all three Trustees would have to be parties and only one of them is here and the document required collective action by all three Trustees.

We don't have to go into the merits of this case, but just in passing, this is a situation where if the merits are ever litigated in some subsequent lawsuit the issue will be whether the income which Dr. Noland earned as a Doctor of Chiropractic, whether

that income should go on the income tax return of Dr. Noland as an individual; and [12] that has been the position of the Government in its reports by the Internal Revenue Agents, which Dr. Noland complains about. Or whether his earnings as a chiropractic doctor should be placed on the income tax return filed on behalf of this so-called charitable trust.

Now, certainly there is no dispute about the fact that these earnings, which I understand run 10 or 15 thousand dollars a year, would have to go on somebody's income tax return. They would either have to be on the income tax return of the Trust, as alleged by Dr. Noland, or they would have to go on the individual income tax return of Dr. Noland as alleged by the Government.

So, we have this peculiar situation where, since it is a question of whether the income is taxed to the Trust or whether it is taxed to Dr. Noland, Dr. Noland obviously has a personal interest in the matter and for that reason we say that he is not qualified to represent the trust because his interest would be to transfer or allocate the income to the Trust rather than having it allocated to his individual income tax return.

And on that basis we dispute the right of Dr. Noland to bring this action which involves a trust with three different Trustees.

Now, going to the fourth point, which is altogether separate, we point out in our motion on behalf of the [13] Internal Revenue Agents that this



amended complaint seeks to obtain a declaratory judgment and have this District Court pass on those questions which I have just set forth, namely, whether the income is taxable to the individual or taxable to the Trust. And since the complaint seeks declaratory relief and seeks an adjudication on those tax issues that I have mentioned, we state that the complaint violates Section 274 (d) of the judicial code. That section reads as follows:

“In cases of actual controversy except with respect to federal taxes, the courts of the United States shall have power upon petition \* \* \* \* \* to declare rights and other legal relations of any interested party petitioning for such declaration \* \* \*”

and so forth.

Therefore, Congress in enacting the judicial code specifically provided the parties could come into Federal courts and obtain declaratory relief: “Except with respect to federal taxes.”

So, we have the most specific provision there in Section 274 (d) of the Judicial Code. That is Section 400, Title 28, U.S.C.A., to the effect that declaratory relief cannot be obtained in this court on federal tax issues. [14]

We have also cited numerous cases upholding that principle where declaratory relief is not available on federal tax issues.

The fifth ground in support of the motion would be that the refund claims are inadequate. In other words, there is a variance between the relief sought



by the refund claims and the relief sought in the complaint.

The variance is fatal and therefore this is a separate ground upon which the Internal Revenue Agents, as well as the Collector, are entitled to summary judgment.

The refund claims were filed on behalf of the Trust, and copies of those refund claims were attached to the amended complaint by Dr. Noland.

Now, since the refund claims specifically provide that the refunds sought by the Trust and Dr. Noland, admits that he cannot bring the other Trustees into this proceeding.

That is a further ground why the court cannot grant the refunds which have been sought.

And Point No. 6 in support of the motion on behalf of the agents is the statute of limitations which I have already indicated to your Honor.

Refund claims have to be filed within three years from the date on which the return was filed. I have quoted the statute which provides when suits can be brought in the Federal courts and the statute which provides the deadline [15] as to filing a refund claim. And then just to apply the law to the facts, we have recited in our motion and in our memorandum that the amended complaint itself shows that the claim for refund was filed March 15th, 1946, and the complainants' papers also show that the payment of \$80.45 was made July 6, 1942.

So, obviously, if payment was made on July 6, 1942, that is more than three years prior to March 15, 1946, and hence the three-year period had al-

ready passed prior to the time that this refund claim was filed.

The only other refund claim also purports to have been filed March 15, 1946, and dates of payment were on or before March 15, 1943, according to the complainants' papers here and again it would appear that more than three years have elapsed between the date of payment and the date of filing of the refund claim.

Now, I will pass on to Ground No. 7 in support of the motion by the agents.

I have indicated previously the nature of that, namely, that what the agents did was to determine that the income earned by Dr. Noland in his profession should be taxed to him rather than be taxed to a charitable trust. A charitable trust can't practice chiropractic. The earnings were by the doctor himself and therefore the agents applied authorities, such as *Lucas vs. Earl*. That case contains a very famous sentence by the late Mr. Justice Holmes to [16] the effect that:

"The fruits of the tree should be attributed to the tree upon which they grow."

In other words, in a case such as that a man who makes earnings cannot arbitrarily allocate them to his wife or someone else. So, in this case we likewise contend that the earnings by the doctor cannot be allocated to a trust.

We have also cited numerous other cases which apply that same principle in the case of *Lucas vs. Earl*.

But we do not mean to get into the merits of that question because the merits cannot be argued when there haven't been proper refund claims and there haven't been proper parties and when the statute of limitations applies and when these issues were previously adjudicated. And on the other grounds that this isn't the proper time to go into the merits. But I mention the merits because Dr. Noland alleged in his complaint that the Internal Revenue Agents acted fraudulently, so we have replied and state the only thing which they really did was to make this determination which we believe was sound and we would support that if this case is ever litigated on the merits.

Now, the final ground in support of the motion for summary judgment is to the effect that there hasn't been any claim stated or facts alleged upon which relief can be [17] granted. In other words, that ground is equivalent to what was previously known as a general demurrer, and that was the ground that we urged before Judge Weinberger when the same Revenue Agents were sued on the same allegations.

Now, the allegations throughout the amended complaint before your Honor and the allegations in the complaint before Judge Weinberger, were to the effect that the agents had acted fraudulently and maliciously and didn't act in good faith in making these determinations.

So, in this final ground we have cited authorities to the effect that for a complainant to merely allege

legal conclusions such as fraud allegations, is inadequate. It would have to have been specific—specific facts should have been recited so the court could make the legal conclusion as to whether the acts in question or the facts constituted fraud.

We also point out that if the complainant had properly pleaded the facts relating to fraud, nevertheless it would be un-availing and would not be the basis of any relief on the ground of authorities such as *Cooper vs. O'Connor*, 99 Fed. (2d) 135.

It so happens that this case until yesterday was assigned to Judge O'Connor and Judge O'Connor in his earlier career was Comptroller of the currency under the Federal Government, and while Judge O'Connor was Comptroller [18] of the Currency he was sued for action which he took and made in his official capacity as Comptroller of the Currency.

In this suit against Judge O'Connor, when he was the Comptroller of the Treasury, it was held by the Court of Appeals for the District of Columbia:

“The Acts of Appellees were performed in the discharge of their official duties and the motives with which those duties were performed are immaterial.”

That is the governing principle here. Even if Dr. Noland could prove that these agents acted maliciously, which of course we deny, under the principle of this O'Connor case a public official must go out and perform his duties. He must make a de-



termination. He might make a wrong determination, and if he does the courts are open to a taxpayer who files the proper refund claims and brings suit within proper time and in the proper fashion.

This complainant has not done so. Now, the only other case I would like to mention is *Standard Nut Margerine vs. Mellon*.

That case was cited in the case against Judge O'Connor while he was Comptroller of the Currency.

Now, the Nut Margerine case was brought against Mr. Andrew Mellon when he was Secreary of the Treasury. It was also brought against Mr. Ogden Mills when he was [19] Undersecretary of the Treasury and they brought in a lot of other Government officials and it was held in that *Standard Nut Margerine case vs. Secretary Mellon*, and that was also a decision by the Court of Appeals for the District of Columbia, that Government officials when they go out and make determinations they must do their duty and they are not subject to being sued by some taxpayer who doesn't like the termination.

That is happening all over the country. Taxpayers who disagree with the examining agents are frequently not pleased about it, but our courts would be in a chaotic condition if every taxpayer who didn't agree with the agents who made the determination could come in and bring suit and say the agents acted fraudulently and maliciously.



So, in that case against Secretary Mellon, which I have just cited, and the official citation is 72 Fed. (2d) 557, there is an exhaustive treatise on the authorities. They go back and point out the cases where judges were sued. Obviously a judge is an official and he has to make his determinations within the scope of his official duties and a person who doesn't like the judge's decision obviously cannot bring a civil suit against the judge and state that his action was malicious and fraudulent. Those motives are held to be immaterial and that is why we have contended right along that these charges of fraud against our Internal [20] Revenue Agents have no proper place in these proceedings and cannot form the basis for any relief.

Now, that is all I have on that point.

In connection with discussing all these grounds I feel that I did overlook a minor point. The document which established the charitable trust discloses three different parties as the original Trustees. By the time this suit is brought, however, instead of those three original Trustees we see that the Trustees are now William D. Noland, H. K. Miller, and Harry R. Maxwell. Those three Trustees are not the three Trustees who were listed in the original Trust agreement establishing this so-called charitable trust.

So, we have pointed out in my memos in the file that it was necessary for there to be some explanation showing that the parties who now bring the suit properly succeeded to the different parties

who were the Trustees when the action was brought. In other words, if A, B, and C were the Trustees according to the original Trust agreement, it is improper for the suit to be brought in the names of, we will say, X and Y, when X and Y are new parties, and there is nothing in the pleadings to explain how the additional Trustees got in. That point is only cumulative, however, because since Dr. Noland isn't a lawyer he cannot represent the other Trustees and we feel they have to be in [21] here because the Trust is before the court in the sense that there is an attempt to litigate the tax liabilities of the Trust.

Now, the most recent development in these proceedings is a document served on the Government on March 19, 1948. That document is entitled "Proposals to Amend Bill of Complaint," and one of the things which will doubtless be advanced to your Honor this morning is whether the Bill of Complaint can be amended as set forth in this document which was served on the Government a few days ago.

Part of the relief requested in these Proposals to Amend is to—well, I will quote it:

"By mistake and error names of other Trustees were mentioned as shown above merely to show that there was more than one trustee and the Bill should be corrected by amending said names, by omitting said names."

So if your Honor should grant that and allow Dr. Noland to strike the additional trustees, we

would claim that there is a lack of indispensable parties because then it would only be one trustee, whereas there were actually three trustees.

Then these Proposals to Amend also request the court to allow the prayer for relief to be changed. I think it is immaterial whether the prayer for relief is [22] changed because there is no change in the facts alleged. So, if there is any amendment along this line we would merely ask your Honor to have the motions for summary judgment filed against the amended complaint to also stand against the amended complaint as further amended by these Proposals.

We don't think that the complainant is entitled to these additional amendments because he was allowed the privilege to amend his complaint once and these Proposals come at a late date, after the case has been at issue for several months, in the sense that our motions have been pending. But if the complainant is to be granted the privilege of further amending we would merely request that our motion for summary judgment stand against the complaint as still further amended.

The only other point I might mention is, we have endeavored to get the file before Judge Weinberger before your Honor so you can take judicial notice—

The Court: The clerk can put them on my desk.

Mr. Oakes: We have the affidavits as to when Collector Westover took over his duties and perhaps that could also be judicially noted. At least

there is an affidavit on file covering when Collector Westover took office.

The Court: Those files were placed on my desk this morning. [23]

Mr. Oakes: That is all.

The Court: You may proceed.

Dr. Noland: Your Honor, I object to the motion of the defendant for res adjudicata in its entirety. I also object to all the motions in their entirety upon the ground that there is not one citation in point.

All of their citations are pertaining to corporations or individuals. Not one citation pertains to a charitable organization or institution of any kind. Therefore, I feel that their motions should be denied.

That this honorable court may better understand the position which I take here, it is true I am not a lawyer. I am a layman. I am not representing the Trust. The Trust is not a complainant. I am not representing the other Trustees. I am not representing anyone or anything except my personal interests as William D. Noland, Trustee under the contract, and William D. Noland personally.

The reason that the Bill was written in the manner in which it was, was merely to show that there were other trustees and for which the Government and the agents took the stand of 167. 167 did not apply to this particular Trust and did not apply to me as an individual personally. 167 is where the Trustee, the Trustor and beneficiaries are one



and the same person. That is not true in this case. I will not go into that at length because it is all [24] on file here.

This Trust was established by the late Judge Franklin Bull.

He showed me the papers of hundreds of trusts that he had established.

For the court's information as to his qualifications, he was connected in previous years in various ways with the United States Government. And as he stated to me—that is, he showed me his personal files.

This Trust was created by three Trustees and it has many, many beneficiaries. Literally they go into hundreds or several thousands, people who have benefitted by the Trust.

So, all of the citations by opposing counsel given to this honorable court, are not in point.

Now, in regard to the case that was filed before the Honorable Judge Weinberger, that was a suit in a court of equity and not a court of law.

Various questions came up at that time as to whether or not I was representing the Trust, representing other individuals, and the Honorable Judge Weinberger asked me who I was representing. I told him myself as a Trustee and myself individually. And if my memory serves me right, he further asked me how many people I was in court and I told him two,—William D. Noland, Trustee and William D. [25] Noland personally; that I was not representing the Trust or the other individuals;



that the names were merely to show that 167 did not apply to me.

The Honorable Judge Weinberger ruled that I had that right and privilege and I was in order and would not be in jeopardy if the court or the Bar Association permitted me to proceed and granted that I was right.

The Honorable attorney made the statement in substance, that the case was dismissed on this, that and the other, which I will not go into. You have heard that.

If my memory serves me rightly the Honorable Judge Weinberger dismissed this case, also at my request, upon the ground that the claims that were filed and carried to the high tax court in Washington had not lapsed for six months, according to the laws which I did not know. And the honorable attorney of the technical department of the United States Government undoubtedly did not know it either, because he instructed me what to do and how to proceed. He is the man that told me that when it was thrown out in Washington that I could immediately file suit in the Federal court.

So, the Honorable Judge Weinberger made the statement—he said:

“Doctor, if you can show me any law to that effect—”, and this is the sum and substance of it, “where [26] I can grant any relief,” he says, “because these things were passed by Congress,” and he quoted a celebrated case.

In other words, I had brought suit before the six months had elapsed and that cannot be done.

So, it is my understanding—and at that time and now I so understood, that the case was dismissed because the suit was filed before the six months elapsed after the high tax court in Washington threw it out.

And as an explanation to this honorable court, I would like to state why the tax court threw it out. The entire tax matter was started in the name of Dr. William D. Noland Trust Estate, Limited. It was carried through the various departments here in Los Angeles, to the technical department for which my understanding is that Attorney Tandro is the head of or Chairman.

So, naturally as it was started that way, in principle, you as a lawyer know that you cannot change horses in the middle of the stream in legal procedures.

The opposing counsel, not these gentlemen, in the tax matters that were handled at that time, the technical departments, when it got up before Washington they changed the title or about halfway going up. As a legal procedure I stayed with the original title as it was, so when we got before the tax court in Washington they were under one title and I was under another and consequently the Government [27] tax court threw it out.

In other words, your Honor, I am a layman. My house is 100 per cent in order and the purpose of the entire situation was to help poor, helpless, crippled people without money. For doing that I was charged with doing something that was nothing

short of sharp practice. Me being a layman I was not quite as fast on the trigger mentally as a lawyer. I did not know how to get around it, so Tandro told me how to get around it by filing a suit in equity and automatically, as he stated to me, and as anyone knows, that in a court of equity it levels off the inequalities of law.

But to make it brief, Judge Weinberger, which was my understanding at that time and now, he dismissed it upon the ground that the suit in equity was filed before the six months elapsed. In other words, after the tax court dismisses, throws it out or whatever the case may be, you cannot file suit in any court until six months have elapsed.

Judge Weinberger brought it up and I stated that under the situation that I could not show him where he could do differently; that that was an act of Congress. And if I am not mistaken he stated that.

Now, that suit was filed against individuals and not against the Government. It was a suit in equity before the Honorable Judge Weinberger, and it was so argued by [28] my honorable opposing counsel at that time. They actually stated that the individuals were not responsible—the Government was, and if I had any complaint it should have been against the Government and not against the individuals. So, since that was against individuals and not against the Government as I felt it could be corrected without going into any great, long litigation of attacking the Government.

Those defendants were in court for the first appearance and if it were against the Government they wouldn't have been there. They wouldn't have had to have been there and the argument by the opposing counsel was that it was against individuals and not the Government.

The case was dismissed on the grounds that I stated.

Now, your Honor, after the case had elapsed over the six months, as Judge Weinberger, if I remember correctly, stated, and if I remember correctly the opposing counsel stated after six months I could file suit.

And to show your Honor that I am right on this, the opposing counsel wanted to have the suit dismissed with prejudice and I objected to that and the Honorable Judge Weinberger ruled that I should be permitted in my capacity, in my capacities to have recourse in the Federal court and that, therefore, to dismiss it with prejudice would be depriving me of my rights and the honorable opposing counsel actually made the statement that he felt that perhaps there [29] was a question and I should have the right to file a suit later in the Federal court.

That is the sum and substance of the conversation at that time, your Honor.

Well, when the case was dismissed and enough time elapsed, I filed suit again in a court of law upon the ground that they claimed, the opposing



counsel, that I was operating under antiquated laws.

Well, I didn't know that the court of equity was antiquated, but assuming the fact that various judicial changes, might be in process and if it isn't or is in perfect order, while it may be good law but not the best, if there is a remedy at law I should not go into a court of equity.

It so happens, your Honor, that I studied the matter very thoroughly in my meager way and I found that under the constitutional law and statutory law I was 100 per cent right in my opinion and had been so held by my former attorneys that I have had and had it not been for the death of the last attorney, which was paid money to serve me individually, not the trust or not the other individual trustees, he would be here today instead of myself.

So, in filing that suit before I came up before the Honorable O'Connor's court, again which I was advised by Government men, mind you, to use these names to show [30] merely—to merely show the court that there were other trustees—the whole situation did not apply to me, and since the other Trustees are not injured, your Honor, in any way, shape, or form, the Trust itself is not injured in any way, shape, or form in one way, while in another way it is. Not being a lawyer I cannot represent it. William D. Noland personally is the injured man, whereby I as an individual am not responsible for business, legal and tax matters of other people



or other concerns, and the tax matter involved is setting out of the Dr. William D. Noland Trust Estate, Limited, to William D. Noland personally.

Might I digress one minute here by stating that Dr. William D. Noland Trust Estate, Limited, is a charitable institution and it specifically states so in the Trust and comes under the heading of the statute in the book that I have on the table—230 Charitable Institutions, and does not come under 167.

Now, the second suit that was brought was brought in a court of law against the United States Government and not against individuals, therefore the *res adjudicata* does not lie in this instance, because the first suit before the Honorable Judge Weinberger was in a court of equity against individuals and not the Government.

The second suit before the Honorable Judge O'Connor is against the United States Government and not [31] individuals.

Now, they make citations in regards that Westover was not in office at that time. Well, frankly, Roosevelt and Truman were not in office when the Monroe Doctrine was made, but nevertheless the United States does not abdicate. It is only his office that is being sued, which under the law of agency, is a department of Government, and that is the only way, according to law, statutory law, and according to the law of agency, to reach the United States Government—that is through its agents and a suit adverse to the Government does not affect those agents individually. It is in name only.

If the court pleases, I would like to use a comparison here. When you declare a State law unconstitutional you name the Attorney General and you have to use his name, but you certainly don't hold him responsible, and if it is knocked over, declared unconstitutional by a Federal court, he is not affected individually. He only represents and is symbolic of that State—the State law.

That is all these gentlemen in this suit are. They are symbolic and they represent the Government and if the decision is against them it is not individually affecting them. It is the Government.

Now, they state that he is not responsible since he wasn't in office. Under the law of agency he is responsible for that office. He is the United States [32] Government so to speak, the same as any previous documents in years and generations gone by that our forefathers set up in this land. We are all subject to it, and I think without any further explanation on that, your Honor, I think that clarifies my position there and shows, as I stated.

Now, if I may state on the statute here again, there is not one citation in all of their papers served on me that is in point in my own and personal opinion, and are not worth the paper they are written on because it is not in point and has nothing to do with this case.

They are coming in on 167 and so far, your Honor, I have not in my meager way, been able to bring them to trial.

I would like to have these issues brought up and if I am permitted to amend this Bill, which I beg this court to grant, I will say this, that this Bill will be so written that there will be no controversies in any way, shape or form on that, because I am eliminating a tremendous amount of material. I am even going to eliminate names so that they cannot come in here where I will have to argue and defend myself against.

As I stated in the proposed amendments, I am coming in on contracts, to see and have adjudicated whether or not contracts are valid in this case, for which the United States Government, as well as the State, held for many years [33] that this trust and the proceedings in which the Trustees were operating was 100 per cent legal.

From 1935, June 1st, until the spring of 1942, the Government, Internal Revenue Department held it as being fine, perfect—I was in order. The Trust was in order. The Trustees and everything else was in order. And an instance came up whereby the United States Assistant District Attorney, when he was here, Crawford, looked over the Trust and a document that I had written in behalf of it, and he declared it is one of the finest—"Doctor," he says, "I know old Judge Bull that wrote it," and he said, "Doctor, you had an angel, stick with it. You are doing great work."

Another instance that came up, your Honor, if you will permit me to state this—and I was down to the United States District Attorney's office and

an attorney down there—Attorney Walker looked over my Trust—I say, “my Trust”. I cannot say “their Trust” according to these attorneys, so therefore I have to say “my Trust” or “the Trust.”

In the presence of other Trustees, Attorney Downing and Attorney Walker, he stated: “Doctor, the Trust is 100 per cent perfect. Your document is 100 per cent perfect and one of the finest legal documents that we have ever read.” He said, “Doctor, who wrote that?” And [34] I said, “I wrote it—compiled it from the authorities and the teachings of Judge Bull.”

I said, “But you gentlemen, now, you are the United States District Attorneys. I want to ask you a question and here is why I have come to you,” and I read them the authorities and I said, “Is there any possible way of ever having this adjudicated?” And these are the words of Attorney Downing. I will not quote it just the way he said it, but in substance he meant this—he used a word there that would not be best to use here. He said, “Doctor, fight it until the end of time. You are right, and remember this, that we are living in the United States of America where the Constitution is still in operation, and don’t give up. Continue to fight.”

Those are the words of Mr. Downing, and almost in identical words of Attorney Walker. They told me that and shook hands with me and they said, “Promise us, Doctor, that you are not going to acquiesce and you are not going to go down in de-



feat and not stand for your rights, because you are 100 per cent legally right.”

That is the District Attorney’s office right in this building, your Honor.

Now, in the motion to amend this Bill—I will not read you the proposed proposals to amend—I will not take your time. You have it before you. I shall not read [35] it unless you want me to.

The Court: You may do so.

Dr. Noland: I will start with the body of it:

“Comes now William D. Noland, Trustee, representing his interest only as a trustee in above benevolent trust estate, and William D. Noland, personally representing his personal interest in above action, and proposals to amend bill of complaint as follows:

“1. By mistake and error names of other trustees were mentioned as shown above merely to show that there were more than one trustee, and bill should be corrected by omitting said names in amendment.

“2. That prayer in bill for judgment be amended so that court may determine two contracts whether valid or invalid, made by William D. Noland as trustee, and William D. Noland, personal, with the said benevolent trust estate, as a trustee and for personal service.

“These proposals are supported by motion to amend and affidavit on file.”

And here is the affidavit supporting the proposals to amend:



“William D. Noland, Trustee, and William D. Noland, personal, complainants in propria persona, being [36] first duly sworn, deposes and says: That he is representing no one outside of himself as a trustee and personal as both his trustee interest and personal interest are involved in above action, therefore he is not practicing law representing anyone else, and contends he has a right to represent his trustee interest and personal interest in above matter, and that he has not been able to procure counsel on account of not having sufficient funds or money to pay the required fees requested by any counsel which he has interviewed for the purpose of acting as counsel in the above matter, therefore the complaint needs corrections and should be amended.”

And that is signed by William D. Noland, Trustee in propria persona and William D. Noland, personal, in propria persona, and sworn to before a notary public.

Now, your Honor, just one statement to clarify the position here. It seems as I go over my bill of complaint that I have so much in here because in covering the matter and covering the contents and the involvements I had to show the trustee part of the picture to apply to me personally, because the two and one is the same thing as far as the legal aspects are concerned. When I come in as a personal individual to show that I am not responsible, the way they are putting it, I have to, according to law, [37] bring in the other party to show the pic-

ture of the contract which is one and the same person. The other two trustees were not involved. They did not set anything out to them.

The Court: May I interrupt you? What is your specific prayer and what is the relief that you are seeking in this case? Let me hear you on that.

Dr. Noland: You mean in the amended bill of complaint?

The Court: Yes, the one that is now before the court. In other words, are you seeking relief as to your own self and not the trustees of this benevolent estate? I want you to explain that to me.

Dr. Noland: Yes, sir.

“Wherefore, complainants pray for process and judgment as follows:

“1. That Section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Ltd., and that any attempt to apply or make application of said Section 167 to said benevolent trust estate is null and void of no effect whatsoever.”

May I digress?

The Court: Certainly.

Dr. Noland: I had to bring that in to show that they could not set everything from the trust to me personal. Now, paragraph 2. [38]

“That as a benevolent trust estate, the trustees for said benevolent trust estate do not have to file any income tax return and that the said trustees do

not owe the Internal Revenue Service or its Agents any taxes of any kind whatsoever.”

Attorney Tandro said it had to be put in that way to “make it stick” as he called it. Now the rest of the prayer:

“That since William D. Noland personally has contracted to give his skill, knowledge and labor to the aforesaid benevolent trust estate for the benefit of the beneficiaries of said benevolent trust estate without profit, salary or wages, that his personal living expenses are paid from the funds of the said benevolent trust estate by the trustees as benevolent trust estate expense, he owes no income tax now nor any of the amounts which have been charged to him as taxes or additional taxes by the aforesaid Internal Revenue Agents transferring, assigning and delivering assets, funds and property from the said benevolent trust estate to the personal account of William D. Noland personally, as his expenses are paid as benevolent trust estate expense by the trustees for said benevolent trust estate.

“4. That the aforesaid Internal Revenue Agents [39] and Service be ordered to return with interest all the monies paid to said Agents and Service as income taxes, because the aforesaid benevolent trust estate is a charitable organization and any and all monies paid for income taxes have been paid in error by the trustees for said charitable organization and said monies should be returned to said benevolent trust estate.

“Wherefore, complainants pray for such other

order, orders, aid and relief as the court may deem just and proper in the premises.”

And if I may add this, your Honor. Two weeks ago it was my understanding in conversation with Attorney Bryant in Judge O'Connor's court, that they would not object to my amending the Bill, but he did want me to serve on them the proposed amendments.

The Court: Was that stated in open court?

Dr. Noland: Not in open court. It was stated in the courtroom. It was stated in Judge O'Connor's courtroom that they had no objection to my amending the Bill, but they wanted the proposed amendments served upon them.

Well, I didn't know that you had to serve them only if they were required, and that is the way I understood it—that they required it, so I served them. I was in the corridor with Attorney Oakes and he made the statement emphatically that he had no objection personally to me [40] amending the Bill and the superiors—his superiors had instructed him to not oppose it and to permit me to amend the Bill; all that he wanted was the proposed amendments. Now, those were statements, your Honor, and a party overheard both statements, and I beg of the court to grant the privilege to amend the Bill.

The Court: Under this prayer what specific relief are you personally seeking? What amount of money or anything of that kind do you want? I want to get your idea of this prayer.



Dr. Noland: Well, the amount of money, your Honor, is very minute so to speak.

The Court: Just the two small items?

Dr. Noland: Yes; the amount of money was only brought in due to the fact that if I didn't bring in the amount of money the opposing counsel would come in with some technicality of law that only a Philadelphia lawyer would know how to look up and I wouldn't know as a layman, and try to get my case thrown out upon the ground of money and this, that and the other thing; and if my amended Bill, if I am granted permission to amend the Bill, I am telling your Honor the money question is going to be left out. I am going to amend the Bill merely upon contracts as stated.

The Court: Who will get relief under your amendment?

Dr. Noland: The relief on my amendment would go to [41] William D. Noland personally.

The Court: And what would be that relief?

Dr. Noland: Where the funds and proceeds of the Dr. William D. Noland Trust Estate would not be set out to me personally to pay taxes on.

The Court: And you claim they assessed those funds against you personally?

Dr. Noland: Yes. If I may state this to explain matters, they made the statement that \$10,000 or \$15,000 a year is taken in. That is a lot of money from a standpoint of just an ordinary salary. Your Honor, that is absolutely no money at all in the work in which we do because the money is used—for instance, there is \$1,000 taken in. There is a



poor individual, a helpless case, some poor old woman or man or child and they have no money. You cannot get them on State relief, Federal relief, or otherwise. Those cases have never been turned away from the door of Dr. William D. Noland Trust Estate, Limited. If those patients need service it is given to them. If certain services outside of my particular meager skill is needed that service is paid for out of the Dr. William D. Noland Trust Estate, Limited, for those poor people. If they need hospitalization and surgery and they cannot afford it and cannot pay one dime, that is paid for.

Now, they are setting out all of that money, your [42] Honor, that those poor helpless men, women and children have benefited by for me to pay taxes on.

I did not get the money. They even set out, your Honor, I might state this—that Hayward apologized for doing it, and said he was under orders. He said, “Doctor, I hate to do this. I will lose my job if I don’t.”

I am only stating that, your Honor, to show the true facts. He set out laboratory fees and said that I benefited one-third from that. Laboratory fees, X-ray pictures. They paid the laboratory themselves and other laboratory fees which every book and record was kept where it was paid for them.

There is one case in particular, a Mr. Brown, that was sent to the Wilshire Hospital. Dr. Robbins overseen the operation and everything. The hospital bill was paid by the Dr. William D. Noland Trust Estate, Limited. The doctor’s fees and every-

thing else was paid. It so happens the Schaefer Ambulance Company donated their services. They set that one-third out, your Honor, to me personally that I paid taxes on.

Do I make myself clear?

The Court: I understand your contention, but there is another question raised here, and that is the statute of limitations. They state that this action was not brought within the three-year statute. What is your view on that? [43]

Dr. Noland: Well, that was the—I think the honorable attorneys here referred to that filing of claims for money. If I am not mistaken that is what they stated, isn't it, your Honor—filing for a refund?

The Court: Within the three-year limitation.

Dr. Noland: Yes. That has nothing to do with the statutory limitation of filing a suit. However, the claims that I did file, your Honor, their statement is erroneous on that. They made a mistake in making the statement.

The Court: Do you in your complaint explain that?

Dr. Noland: Everything is explained.

The Court: As to what was done so that it was taken out of the three-year statute?

Dr. Noland: Well, I was not outlawed on that, your Honor. They made a mistake on making that statement. I was not outlawed from a statutory limitation. The claims that were filed in good order—

The Court: Did you file within the time allowed by statute? Counsel is urging that you did not. I am just trying to get your views as to that.

Dr. Noland: They were filed within the claim.

The Court: Within the three years?

Dr. Noland: Yes. Now, after the claims have been filed once and it is thrown out you cannot file again and go [44] on those particular claims. Now, that is where the honorable counsel here is attempting to confuse this court. It is only mentioned in here merely to show the entire picture—the truth of the entire works and therefore they are bringing in that it has been over three years since those claims were filed. Certainly, but that has nothing to do with the claims, the claims that were filed and thrown out as I explained further, because there were two different titles got before the tax court. They had no business doing that. But they did it purposely. It is a trick in law to get you thrown out. Had I done it the tax court would have, perhaps, held me in contempt—maybe not as a layman, I don't know, but then, your Honor, those claims are only mentioned through here and it would not make any difference.

The Court: When do you think the three-year statute ran against this action? When do you think it commenced, if it did?

Dr. Noland: Against this action?

The Court: Yes.

Dr. Noland: It can't commence—couldn't commence in 25 years because it is not even applied to

this action, your Honor.

The Court: It doesn't apply here?

Dr. Noland: No. Those claims that they are speaking [45] about have no connection with this lawsuit. In other words, your Honor—

The Court: What I am trying to get at is your view as to the bringing of this action for your own personal relief and not for the relief of the trustees or the estate. Now, does the three-year statute run against you? When does it commence, if it does, against your personal relief?

Dr. Noland: Well, the three-year statute of limitation commences after I have been notified of the tax.

The Court: Has that been within three years?

Dr. Noland: Some of it has, yes, but I haven't filed those. I haven't even asked for any of the—what they are claiming that the statutory limitation runs against—that has not been filed, your Honor.

The Court: Have you filed for your own personal relief?

Dr. Noland: No. I just ignored it. I forgot it. I haven't filed for that relief and I haven't mentioned in here why I didn't go about it, why I didn't try to get any money back, even though it was paid, but that was because my health will not permit it and that is why I didn't, your Honor.

The Court: You know the purpose of the statute of limitations? It means you must bring a suit within a certain time or it is outlawed. [46]

Now, I am trying to get your view as to when you think the three-year statute ran against you.



You are suing here for your own individual benefit. Now, when should you act to keep that statute from running against you? Have you done anything, or should you have done anything within three years so the statute would not apply? The other side makes the general statement that the action is barred by the statute of limitations.

Dr. Noland: The statute of limitations has not run against me in filing this suit.

The Court: I know you say that, but counsel says it has. I am trying to get your specific views.

Dr. Noland: For the simple reason, taking their own argument—I continue to get letters, threatening letters, even since this has been filed—since 7315-O'C has been filed. I am still getting statements and demands from the United States Government. I am still getting demands from departments of the Government that are named in this suit—since this suit has been filed.

The Court: Does that appear in your pleadings so the court can rule on it?

Dr. Noland: No; I couldn't put that in, your Honor, because I received it afterwards, but it shows in my pleadings here.

The Court: That is what I am trying to get at.

Dr. Noland: My pleadings show here the entire setup and where the statute of limitations does not run against me.

The Court: Do your pleadings show the Government or defendants are still considering your claim?

Dr. Noland: Oh, yes.



The Court: That they haven't completed it and given you a final ruling?

Dr. Noland: Yes.

The Court: Do your pleadings show that?

Dr. Noland: That is right, your Honor.

The Court: Will you point out in your amended complaint some allegation to show it is still continuing, the controversy and that the statute has not run against you?

I am going to recess in about ten minutes for the noon recess and continue the case until two o'clock, and in the meantime you can look into that.

Dr. Noland: Here is one:

"The aforesaid letter of Defendant George D. Martin, Internal Revenue Agent in Charge, dated January 26th, 1945, and aforesaid statement signed by John H. Cramer, Internal Revenue Agent, dated November 3rd, 1944, and attached to said letter dated January 26th, 1945

\* \* \* \* \*

That alone—

The Court: When was this action filed?

Dr. Noland: This action, the first action was filed—

The Court: The first complaint?

Mr. Bryant: Will your Honor pardon me, please?

The Court: Let me hear him.

Mr. Bryant: I have to be in Judge O'Connor's court. Would your Honor excuse me?

The Court: Certainly. I understand counsel here is attending to it.

Dr. Noland: September 15th, 1947.

The Court: So you are within the three years from the date of that?

Dr. Noland: Yes, I am within three years.

The Court: What does that letter relate to? Does it show that you are still having a controversy there?

Dr. Noland: Yes.

The Court: What is it? Just call my attention to it. You have made it a part of your pleadings.

Dr. Noland: I think the letter is an exhibit, your Honor. It is mentioned here and then comes in as an exhibit.

The Court: Are there any others? I will look into that.

Dr. Noland: That is on page 6. [49]

The Court: We are going to adjourn in a few minutes for the noon recess and you may look up your pleadings, your amended complaint as to just what I am trying to get at, and that is whether there is any date in the three years which shows you are still having a controversy over this claim with the defendants.

Dr. Noland: I can do that, your Honor. I paid particular attention and notice to that when I wrote it, that I was in my three-year period.

The Court: Have you finished, Doctor? I don't want to cut you off.

Dr. Noland: The only thing I will say is this, your Honor, the dates are very simple. They are right in here. It shows there has been a controversy during the three years.

The Court: Is there anything else you want to say?

Dr. Noland: I just beg the court to grant me leave to amend because my house is in order and anything that they have said against this is not even one iota in point to it. There is nothing but individuals and corporations referred to. There is not one citation that they have brought in as to a charitable institution or charity work. They say they stand on 167 and I simply cannot get them to bring that issue before the United States Federal Court, but if I am permitted to amend the Bill I am going to say this, [50] your Honor, that it will be an utter impossibility for them to evade it the next time. Thank you.

The Court: Mr. Oakes.

Mr. Oakes: On this subject of amending, if the court please, suit was brought in the case before Judge Weinberger—and I would have to verify this from my file, but I am fairly certain that there was some amended complaint in that action, and then of course this action, as I see it, is largely a repetition.

The Court: They have amended once, you say?

Mr. Oakes: Yes, 5716.

The Court: In this suit?

Mr. Oakes: Yes. Now, getting to this suit.

The Court: How many times has there been an amendment in this suit?

Mr. Oakes: I am sure they amended last fall.

The Court: Amended it once?

Mr. Oakes: Amended once. And then, I think

it was two weeks from yesterday, we were before Judge O'Connor and then the question came up.

The Court: The same one you have here now?

Mr. Oakes: This case that your Honor has came up two weeks ago before Judge O'Connor on the question of amending. Well, we couldn't visualize what the amendment [51] would be.

The Court: Of course you wouldn't know until it was served upon you.

Mr. Oakes: And we didn't know what it was, so Mr. Bryant and I stated that it would be a good idea if we were furnished with a copy of the amendment and Dr. Noland, within the proper time, furnished us with these Proposals to Amend the Bill of Complaint.

The Court: And he specifies there how he wants to amend?

Mr. Oakes: He has read them into the record.

The Court: And did he serve that on you two weeks ago?

Mr. Oakes: Received by the United States Attorney on March 19, 1948, and at this time I don't think the Government need object to those proposals. In fact, I think your Honor can consider the complaint amended by these proposals.

The Court: Very well, let the record show there is no objection to the proposals of the plaintiff to amend, and it will be so amended.

Now, the case is before the court on the amendment and the complaint as amended, and that proceeding has not been objected to.

Mr. Oakes: I agree that he can make the amendment as stated in these proposals to amend the Bill of Complaint which were served on the United States Attorney on March [52] 19th, 1948.

The Court: And that is the amendment you want to make?

Dr. Noland: Yes, the ones I served on them.

The Court: Very well, let the record show the amendments are allowed because you both agree to it.

Mr. Oakes: Now, as I intimated before on that amendment, and I would like to have our motion stand—I would like to have our motion as made stand with reference to the amended complaint also if that is agreeable to the court.

The Court: Yes.

Mr. Oakes: As recently amended.

The Court: Certainly.

Mr. Oakes: Then I guess that disposes of all the questions with regard to amending the complaint, and it is now under submission to your Honor, as far as the Government is concerned.

The Court: Very well. Plaintiff has stated his position as to whether the three-year statute has run against him. What have you to say about that?

Mr. Oakes: Well, I cited the law on that.

The Court: As the complaint stands amended.

Mr. Oakes: The law is contained in Section 3772, Internal Revenue Code, and that says:

“No suit or proceeding shall be maintained [53] in any court for the recovery of Internal Revenue tax alleged to have been erroneously



or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof."

So, the prerequisite to the suit is the filing of the claim for refund.

Then we have to refer to Section 322(b) (1), Internal Revenue Code, and that provides the three-year limitation.

The Court: According to the plaintiff during those three years the controversy was still in existence and continuing. What do you say as to that?

Mr. Oakes: Well, the statute says—

The Court: I know the statute generally fixes the time in which you have to bring a suit, but he is saying and his complaint shows that there is still a controversy over the refund between the defendants and the plaintiffs within the three-year period.

Mr. Oakes: Well, the controversy, I think, is [55] immaterial, your Honor.

The Court: There is not only a controversy, but he says they are still considering his contention which he had before the defendants and the Government.

Mr. Oakes: Well, let me put it this way. I will quote from my memorandum. Exhibit I to the

amended complaint shows an alleged claim for refund filed March 15th, 1946, with respect to a payment of \$80.45 for the year 1937, made on July 6th, 1942.

So, according to his own figures, he made the payment in July of 1942, and according to his own figures he did not file his claim until March 1946. That has to be more than three years.

The Court: Between 1942 and 1946 is your contention?

Mr. Oakes: Absolutely. The payment was made in 1942 and he waited until 1945, March 15th, 1946, rather, to file a claim. So, no matter how many contentions or arguments or controversies there were, there was no claim as to that filed within three years after the payment on July 6th, 1942.

Now, the other one he didn't give us a specific date. He said that his refund claim was filed March 15th, 1946, and he said the payments were on or before March 15th, 1943. So, possibly, that claim might be within the three years, but the other one is clearly over three years. However, [56] it is only a \$35.00 item.

The Court: It doesn't make any difference if it is only a dollar. It isn't a question of the amount.

Mr. Oakes: We have set out eight different grounds as to why this suit hasn't been properly brought—*res adjudicata* and all the other arguments.

The Court: You have heard his argument as to why he says *res adjudicata* does not apply, and so forth.

Mr. Oakes: In his argument I think your Honor put your finger on the essence of this by stating: "Well, now, what is the prayer for relief?"

Paragraph 1 wants the court to make an adjudication on Section No. 167.

Well, that is declaratory relief. And then Paragraph 2 wants an adjudication that the trust estate does not have to file a tax return. Well, that is purely declaratory relief.

Paragraph 3 also wants an adjudication as to these earnings. More declaratory relief, which is prohibited by Section 274(d) of the Judicial Code.

Then your Honor wanted to know whether this relief was for the doctor personally or for the trust estate. And you wanted to know about the prayer for relief and he quoted Paragraph 4 of his own prayer for relief and in that he prays: [57]

"That the aforesaid Internal Revenue Agents and Service be ordered to return with interest all the moneys paid to said agents and service as income taxes, because the aforesaid benevolent trust estate is a charitable organization and any and all moneys paid for income taxes have been paid in error by the trustees for said charitable organization and said moneys should be returned to said benevolent trust estate."

So, under his own prayer he says the trustees paid it, but it should be returned to the trust; so there again he is asking for relief for the trust and not for himself; and he can't represent the trust

because they have an adverse interest and he can't bring in the other trustees.

Now, I simply cannot keep up with all this narrative that the doctor has gone into. He has been very active. He has had this up before the tax court in Washington and with various individuals and agencies and United States Attorneys. I don't know about those conversations. I just merely think they are immaterial, but I do want to say that on the judgment entered by Judge Weinberger it speaks for itself, and it isn't to be interpreted in accordance with the understanding by the doctor. And I only want to add that under the Federal Rules of Civil Procedure— [58]

The Court: Did Judge Weinberger make findings and issue a decree in that case?

Mr. Oakes: He gave a judgment which I quoted in full, your Honor, and that stated why he was making the ruling.

The Court: Suppose you gentlemen return at two o'clock and we will go into that a little more. We haven't time now.

Any other matters that you want to look up during the recess you may do so. We will adjourn now until two o'clock.

(Whereupon, at 12:00 o'clock noon a recess was had in the above entitled matter until two o'clock p.m. of the same day.) [59]

Los Angeles, California,

Tuesday, March 30th, 1948—2:00 p.m.

The Court: You may proceed.

The Clerk: If your Honor please, counsel for the defendants has not arrived.

The Court: You may proceed. Counsel for the defendant should be here. Go right ahead.

Dr. Noland: Your Honor, it seems to be a contention of the defendants that I did not file the suit within the three-year period after receiving communications from the Government.

I have the papers here and the letters and also the file.

The Court: What I am trying to get at is this. Are they a part of your complaint?

Dr. Noland: Yes, they are a part of my complaint.

The Court: I have to decide this case on the record that is before me.

Dr. Noland: It is in the complaint.

The Court: I am trying to get the record clear in my mind. Have you filed a trial brief?

Dr. Noland: Yes.

The Court: I haven't seen it. Will you point it out to me in your trial brief?

Dr. Noland: That is Exhibit C.

The Clerk: What date was it filed? [60]

Dr. Noland: I received this letter December 14th, 1944.

The Court: What does the letter say?

Dr. Noland: Shall I read it?

The Court: Is it attached to your complaint?

Dr. Noland: Yes.

The Court: What was the date of the letter?



Dr. Noland: It was mailed to me on December 14th, 1944.

The Court: And reached you when?

Dr. Noland: It either reached me the same day or the following day.

The Court: All right.

Dr. Noland: Shall I read you the contents of the letter?

The Court: Yes.

Dr. Noland: It is addressed to Dr. William D. Noland, 3944 Wilshire Boulevard, Los Angeles, California. The letter reads:

“Dear Dr. Noland:

“An office audit of your income tax return for the year 1943 has resulted in a deficiency of tax and penalty in the amount of \$1,114.86. The explanation of the changes causing this deficiency and the re-computation of the tax are shown in the [61] accompanying statement.

“If you are in agreement with the adjustments, the enclosed form 870 should be executed and returned to this office within ten days in order to expedite the closing of your case and thereby stopping the accumulation of interest.

“Payment of the additional tax due, plus statutory interest computed from the due date of the first installment to date of payment, should not be made until notice and demand is received from the Collector of Internal Revenue in your district.

“Any correspondence which you desire to submit in connection with the above should refer to Internal Revenue Agent J. F. Fraser.”

And that is signed, "Very truly your, George D. Martin, Internal Revenue Agent in Charge."

Then on December 29th, 1945, I received another letter. That is under Exhibit F.

The Court: What is that?

Dr. Noland: It is a letter dated December 29th, 1945, on their letterhead, and it is addressed to Mr. William D. Noland, 3944 Wilshire Boulevard, Los Angeles 5, California. It reads:

"Dear Mr. Noland:

"You are advised that the determination of your [62] income and Victory Tax liability for the taxable year ended December 31, 1943, discloses a deficiency of \$1,245.13, and \$62.26 in penalty, as shown in the statement attached.

"In accordance with the provisions of existing Internal Revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

"Within 90 days (not counting Sunday or a legal holiday in the District of Columbia, as the 90th day) from the date of the mailing of this letter, you may file a petition with the tax court of the United States, at its principle address, Washington, D. C., for a re-determination of the deficiency or deficiencies.

"Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of A:CONF. The signing and filing of this form will expedite the closing of your return by permitting an early

assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.” [63]

And that is signed, “Very truly yours, Joseph D. Nunan, Jr.”

Then on August 26th, 1945, I got another one. I didn't mark it as an exhibit. I overlooked that one. This is dated January 26th, 1945. It is addressed to Dr. William D. Noland, Trust Estate, Limited, 3944 Wilshire Boulevard, Los Angeles, California. And then:

“Dear Dr. Noland:

“I enclose a copy of the report of the examination of your income tax return—”

If your Honor will permit me to make an explanation here.

The Court: Yes, I guess so. Go ahead.

Dr. Noland: I would first receive a letter in the name of the Trust Estate advising me of the indebtedness, and then I would receive it in my own personal name, setting forth the indebtedness to me. That is why I had to write my bill in the way I did.

And this is the letter:

“I enclose a copy of the report of the examination of your income tax return for the year 1943.

“After consideration by this office the following adjustment of your tax liability appears to be warranted for the reasons stated in the report. [64]

The additional tax for the year 1943 is \$1,061.77. Penalty, \$53.09. Total additional tax and penalty, \$1,114.86.

“If you agree to this adjustment the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and penalties and to stop the accumulation of interest. Such interest will cease 30 days after the receipt of the executed form or upon the payment of the additional tax and penalties to the Collector, whichever occurs first.

“If you desire to make immediate payment of the additional tax and penalties without awaiting assessment you should forward your remittance to the Collector of Internal Revenue at Los Angeles 12, California, enclosing this letter or a copy thereof.

“Interest on the additional tax should be included in your remittance computed at the rate of six per cent per annum from the due date of the first installment to the date of payment.

“If you do not agree to the adjustment of tax and the penalties proposed you may file a protest, executed in triplicate under oath, with [65] this office within 30 days from the date of this letter, stating the grounds for your exceptions.

“Any protest so filed will have careful consideration and if you so request an opportunity for a hearing in this office it will be granted you prior to the final determination of any deficiency against you.



“This letter is not a final notice of deficiency and this office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

“If you should fail to pay the additional tax and penalties to the Collector of Internal Revenue or to file with this office within the 30-day period mentioned, either a waiver or the enclosed form or a written protest, final determination of your tax and penalty liability will be made and notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income and profit tax deficiency.

“Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.”

That is signed, “Respectfully yours, George D. Martin.” [66]

The Court: You need not read all of them. I will have to check into them.

Dr. Noland: Your Honor, my contention is that my suit is in order. Opposing counsel contends that the statutory limitation invoked in this case—I think your Honor can see that this suit was filed before the three-year statutory limitation period. I was very careful in checking that before even I filed the suit. And I appreciate and beg this court to deny their motion and grant leave to amend.

The Court: They have conceded that you can have your amendment. That is all conceded.

Dr. Noland: Thank you.



Mr. Oakes: I won't take much more of the court's time because we have gone into it very thoroughly during the forenoon session.

I do just want to state that under the judgment by Judge Weinberger, and it was dated January 9th, 1947, and it was entered and I have quoted it in our motion on behalf of the Internal Revenue Agents.

Obviously the judgment speaks for itself and the interpretations by the parties would not be controlling. The essence of the order, one of the grounds that was under consideration, was that the above action, not only with respect to the injunctive relief therein prayed, but also [67] as to all the other aspects and in its entirety is hereby dismissed as to the above four defendants, on the ground that the complaint herein filed fails to state a claim upon which relief as prayed for in the complaint or any other relief can be granted against said four defendants or any of them.

And therefore Judge Weinberger thus used sweeping language to hold that these various grounds of relief which were presented to him and which are now again presented to your Honor, did not constitute a cause of action or any facts upon which relief could be granted.

There was some discussion by Dr. Noland as to his claim that this prior judgment wasn't binding on him. He stated that it would not be binding because it did not contain any recital that it was entered with prejudice.

So in that connection the whole argument can be disposed of by a reference to the rules of Civil Procedure. Rule 41(b) covers the subject and it states:

“Involuntary dismissal. Effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court a defendant may move for dismissal of an action or of any claim against him after the plaintiff has completed the presentation of his evidence. The defendant without waiving his right to offer [68] evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief unless the court in its order for dismissal otherwise specifies a dismissal under this subdivision and any dismissal not provided for in this rule.”

Now, that is the kind of dismissal Judge Weinberger entered—a dismissal other than a dismissal for lack of jurisdiction or improper venue operates as an adjudication upon the merits. And therefore since the rules so provide we contend that we had an adjudication upon the merits before Judge Weinberger and if that doesn't have the effect of *res adjudicata* I cannot see any limitation whatsoever on the doctor's right to bring suits for evermore. I think the issues were settled before and that is only one of the eight grounds, any one of which I believe are adequate to support our motions.

The Court: What was the title of the action

before Judge Weinberger? Was it the same as the title here?

Mr. Oakes: The title of the action before Judge Weinberger was exactly the same as to the complainants. It involved William D. Noland individually and it also involved this same trust and the same three trustees.

The Court: I mean the title. [69]

Mr. Oakes: It is identical as far as the complainants are concerned. Now, as to the defendants, there was this variation. In that case the doctor sued the Commissioner of Internal Revenue himself and also four Internal Revenue Agents, and the Commissioner of Internal Revenue in Washington, D. C. It was conceded by Dr. Noland that the suit should not have been brought against the Commissioner of Internal Revenue out here in Los Angeles, so that eliminated the Commissioner.

But we still had remaining in that prior action the same four Internal Revenue Agents who are now being sued in this action.

He sues the Collector and four agents, and in the prior action he sued the Commissioner and the same four agents.

So, the Government having prepared its motions and memoranda of supporting authorities in considerable detail, I would like to have it submitted so your Honor can study this voluminous file, including all the authorities cited by both sides.

The Court: Well, I will take the matter under submission.

(Whereupon, at 2:30 o'clock p.m., a recess was had until 10:30 o'clock a.m., of the following day, Wednesday, March 31, 1948.) [70]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 3rd day of May, A.D. 1948.

/s/ J. D. AMBROSE,  
Official Reporter.

[Endorsed]: Filed May 25, 1948.

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[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California  
April 19, 1948

The Court: I want to dispose of a matter that has been submitted for decision. It is case No. 7315, Noland and others against the Collector of Internal Revenue and certain agents of the Government.



The case is before the court on motions for summary judgments of the defendant and the dismissal of the action on the ground, first, that the complainants are precluded from bringing the instant action against defendants on the principle of *res adjudicata* as the complainants are the same complainants who brought the action in this court in Case No. 5716-W on January 9, 1947, in which the action was dismissed and was a case where the complainants sought relief of a refund of the same tax payments as are included in the instant case, and a prayer for relief in the former action which related to the instant subject matter.

That case was first brought by William D. Noland, H. K. Miller, and Harry R. Maxwell, Trustees of the Dr. William D. Noland Trust Estate, Limited, a beneficial trust estate, and William D. Noland versus George D. Martin, Internal Revenue Agent, and other agents.

The complaint was filed on August 26th, 1946, and judgment of dismissal was signed on January 9, 1947.

The first action was in *propria persona*. The [73] prayer was for relief in eight matters. First, that a temporary restraining order be issued restraining defendants from molesting or interfering with plaintiffs or with interfering in any transfer of property pending determination of the case.

Second, that an order to show cause be issued as to why such restraining order should not be issued.

Third, that a temporary injunction be issued to the same effect.



Fourth, that a permanent injunction be issued.

Fifth, that defendants be ordered to return \$80.45—\$210.00 with interest which was paid by plaintiff Noland personally as a result of assigning income to the account of Noland personally from the account of Noland, Trustee, all of which was unlawful.

Sixth, that plaintiff be given \$50.00 damages for fraud as a result of wrongful transfer effected by defendants, and mental anguish, et cetera, caused thereby.

Seventh, that the transfer of funds, assets and property to the personal account of Noland from the Trust be declared null and void.

Eighth, that plaintiff be awarded attorney fees, if one is employed, and for costs.

In a separate order of dismissal the court dismissed as to the defendant Newman for lack of jurisdiction due [74] to **improper venue**.

The court dismissed as to the other defendants and issued judgment on several grounds:

First, that **injunctive relief be denied on the** ground that no cause of action was stated upon which such relief could be granted. That it does not appear that any irreparable injury will result from the failure to grant **injunctive relief**. That there is an adequate remedy at law.

Second, that the action is dismissed not only as to injunctive relief but in its entirety since plaintiffs have failed to state a cause of action on which any relief can be granted.

Third, the defendants be awarded costs.

The instant action was filed on July 7, 1947.

The amended complaint is brought by the same parties plaintiff and the same parties defendant with two exceptions. The defendant Newman is omitted and the defendant Harry C. Westover, Collector of Internal Revenue, has been added.

The court granted a motion permitting the eliminating and adding of these names.

The prayer of the amended complaint in the instant action is as follows:

First, that Section 167 of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate, namely, Dr. William D. Noland Trust Estate, Limited, and that any attempt to apply or make application of said Section 167 to said benevolent trust estate is null and void and of no effect whatsoever.

Second, that as a benevolent trust estate the trustees do not have to file an income tax return and that no taxes are due.

Third, that since William D. Noland personally has contracted to give his personal services to the trust estate without profit that the trust estate is properly paying the living expenses of Dr. Noland and that Dr. Noland owes no taxes.

Fourth, that all monies paid by defendants be refunded with interest.

This contention of the defendants is sustained by the record in both cases.

It is further contended that the present Collector

cannot be held liable for acts before he commenced his duties and the alleged refund relied upon was before that time. That principle is recognized by the Supreme Court in a decision in 257 U. S., page 1, and in another decision in 314 U. S., page 186.

It is urged by the defendants that the present action is barred by the statute of limitations. [76]

Section 372 (i.c.) provides in substance that no action for refund shall be brought in any court until a claim for refund has been filed with the Commissioner according to the provisions of law pertaining thereto, nor shall any action be maintained less than six months after the filing of the claim for refund or more than two years after a notice of disallowance has been sent to the taxpayer. It is further provided, in substance, that a claim for refund must be filed within three years from the time when the return was filed or within two years from the time the tax was paid, whichever is later.

Page 1 of Exhibit 1 of the amended complaint shows that an alleged claim for refund was filed for \$80.45 on March 15th, 1946, for a payment made on July 6th, 1942, for the taxable year of 1937. Thus, it appears in regard to this alleged claim for refund, that this claim was barred by the three-year period when filed.

The only other refund claimed is that set forth at page 3 of Exhibit 1 of the amended complaint.

This claim purports to have been filed March 15th, 1946, and it is stated that the date of pay-

ment was on or before March 15th, 1943. This second claim was for \$35.64 and defendant contends that plaintiffs have failed to show that the claims were filed within the statutory period. [77]

It is contended that tax monies as to refunds sought were paid by the trustees and it is there prayed that the refund should be made to the said benevolent trust estate and the trust estate is seeking refund for itself; that the suit should be prosecuted by the trustees rather than by William D. Noland as an individual, although he is claiming now that the refund is due him on his individual account.

It is the conclusion of the court under the record now before the court that the complainants are not entitled to the relief prayed for. Therefore, the motion for summary judgment of the defendant is sustained with costs.

No findings of facts is now required under the new rules on motions for summary judgment, so the defendants are directed to prepare and present a form of decree by next Thursday.

(Whereupon, the above entitled proceedings were concluded.) [78]

### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and

correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 3rd day of May, A.D. 1948.

/s/ J. D. AMBROSE,  
Official Reporter.

[Endorsed]: Filed May 25, 1948.

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[Endorsed]: No. 11978. United States Court of Appeals for the Ninth Circuit. William D. Noland, Trustee, and William D. Noland, Personal, Appellant, vs. Harry C. Westover, Collector, United States Treasury Department, Internal Revenue Service, Sixth Collection District of California, Los Angeles Division, et al., Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 16, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



United States Court of Appeals for the  
Ninth Circuit

Civil Action—No. 11978

WILLIAM D. NOLAND, Trustee, Dr. William D.  
Noland Trust Estate, Ltd., a Benevolent Trust  
Estate, and WILLIAM D. NOLAND, Personal,  
Appellants,

vs.

HARRY C. WESTOVER, Collector, United States  
Treasury Department, Internal Revenue Serv-  
ice, Sixth Collection District of California, Los  
Angeles Division, et al., etc.,

Appellees.

STATEMENT OF POINTS

Claims of Appellants, William D. Noland, Trust-  
tee, and William D. Noland, Personal, in submit-  
ting statement of points, are as follows:

Point 1.

That the appellant William D. Noland, Trustee,  
is representing his interest in a contract under  
which the Dr. William D. Noland Trust Estate,  
Ltd., a benevolent trust estate, a charitable organ-  
ization, is established, organized by a contract by  
and between the trustees, and the appellant William  
D. Noland, Trustee, is a party to the said contract,  
and the said contract under which the said chari-  
table organization is established provides it is to  
be administered by natural person trustees in a  
joint tenancy, holding in trust as to distribution of  
avails. acting under citizenship, common law rights  
of contract, and constitutional rights, federal laws

and immunities vouchsafed to all persons, as set forth and provided in and by the Constitution of the United States of America, and so organized on June 1, 1935, with a board of trustees and numerous beneficiaries who are poor people and poor children who are unable to pay for health service when they are ill and afflicted with illness of any kind. And the District Court below in making and entering summary judgments against the second amended bill of complaint is a denial of due process of law and a denial of constitutional rights of appellants.

Point 2.

The District Court below granted motions for summary judgments and dismissed the second amended bill of complaint, and the record shows that the aforesaid Federal Internal Revenue Collectors and Agents cited section 167, Title 26, of the Federal Internal Revenue Code in support of their activities in unlawfully assigning, transferring and delivering assets, funds and property from the aforesaid benevolent trust estate, a charitable organization, without permission from appellants or anyone else, to the account of William D. Noland, personally, and thereby levying additional income taxes against William D. Noland, personally, an appellant hereof, and said section 167 of the Federal Internal Revenue Code provides that where the trustee, trustor, and beneficiary are one and the same, the income tax is charged to the trustor, and within the aforesaid benevolent trust estate and charitable organization, there are a board of trus-

tees and numerous beneficiaries, therefore, the said granting of motions for summary judgments and dismissing the second amended bill complaint, and the District Court below making and entering said summary judgments on April 21, 1948, was a denial of constitutional rights and due process of law against appellants.

### Point 3.

Aforesaid section 167, Title 26, of the Federal Internal Revenue Code does not apply to the aforesaid benevolent trust estate and charitable organization and it does not apply to William D. Noland personally, therefore, the aforesaid Internal Revenue Collectors and Agents violated Section 23, Subdivision (o), Title 26, Federal Internal Revenue Code, which provides for charitable and other contributions, and under paragraph (2) of said section and subdivision it provides a corporation, trust, or community chest, fund, or foundation, created or organized in the United States or any possession thereof or under the laws of the United States or of any possession of the United States, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which enures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. The said provision of Title 26, section 23, (o)(2) is the law that governs the

aforesaid benevolent trust estate and charitable organization, and the aforesaid section 167, Title 26, of the Federal Internal Revenue Code as cited by said Internal Revenue Collectors and Agents, in support of their unlawful activities as set forth in the record hereof on appeal, does not rule and govern, and the District Court below, in making and entering the aforesaid summary judgments on April 21, 1948, and dismissing complainants and appellants second amended bill of complaint, it was a denial of constitutional rights and due process of law against appellants.

Point 4.

On March 30, 1948, in a hearing before the District Court below, motions were made by the defendants for summary judgments against the first amended bill of complaint, and at the said hearing on said date, complainants made a motion to amend first amended bill of complaint, and the said District Court below ordered that the said first bill of complaint be amended, and the said Court also allowed the said motions by said defendants for summary judgments to lay on the record and stand against the second amended bill of complaint when amended, filed and served, and the said Court granted and ordered leave to amend the first amended bill of complaint on March 30, 1948, at said hearing before said Court, and the second amended bill of complaint was filed and served on April 19, 1948, and on April 21, 1948, the said Court, from the motions for summary judgments



presented to said Court on March 30, 1948, made and entered two summary judgments against complainants' second amended bill of complaint by granting the said motions for summary judgments made by defendants on said date of March 30, 1948, the two said summary judgments being made and entered by the said Court on April 21, 1948, which was a denial of complainants' constitutional rights and due process of law.

### Point 5.

On April 21, 1948, the District Court below made and entered a summary judgment, dismissing the second amended bill of complaint in favor of Harry C. Westover, defendant, and against complainants, and the motion for summary judgment was made before the said Court on March 30, 1948, by the counsel for said defendant, the said motion for summary judgment being made against complainants' first amended bill of complaint, and the said Court granted a motion by complainants to amend first amended bill of complaint making an order to such effect, and the second amended bill of complaint in compliance with the order of said Court on March 30, 1948, and on April 19, 1948, the second amended bill of complaint was filed and served, and the said Court made and entered the said summary judgment on April 21, 1948, by granting a motion for summary judgment made by the said defendant on March 30, 1948, and the said motion for summary judgment was filed and served December 1, 1947, against the first amended bill of complaint of com-



plainants, thereby the complainants were denied their constitutional rights and due process of law.

Point 6.

On March 30, 1948, a motion for summary judgment was made by defendants George D. Martin, Norman Hayward, Raymond B. Sullivan and John H. Cramer, in the District Court below, against the first amended bill of complaint of complainants, and on the said date of March 30, 1948, before the said Court the complainants made a motion to amend the first amended bill of complaint, and the said Court granted said motion to amend by making an order to amend said bill of complaint, and complainants filed and served second amended bill of complaint on April 19, 1948, and the said motion for summary judgment was filed and served on December 1, 1947, against the first amended bill of complaint of complainants, and the said Court on April 21, 1948, granted the motion for summary judgment made on March 30, 1948, against the first amended bill of complaint, by allowing said motion for summary judgment to lay over on the record to apply it against the second amended bill of complaint of complainants, and the said Court on April 21, 1948, made and entered a summary judgment against the second amended bill of complaint of complainants and in favor of said defendants, thereby denying complainants of constitutional rights and due process of law.

Wherefore, complainants and appellants respect-

fully pray that the aforesaid summary judgments of the aforesaid District Court below be reversed.

Dated Los Angeles, Calif., May 22, 1948.

Respectfully submitted,

/s/ WILLIAM D. NOLAND,

Trustee,

Appellant in Propia Persona.

/s/ WILLIAM D. NOLAND,

Personal,

Appellant in Propia Persona.

Received copy of above July 14, 1948.

/s/ JAMES M. CARTER,

U. S. Atty.,

/s/ O. H. MITCHELL,

Asst. U. S. Atty.,

Attorneys for Appellees.

[Endorsed]: Filed July 16, 1948. Paul P. O'Brien, Clerk.